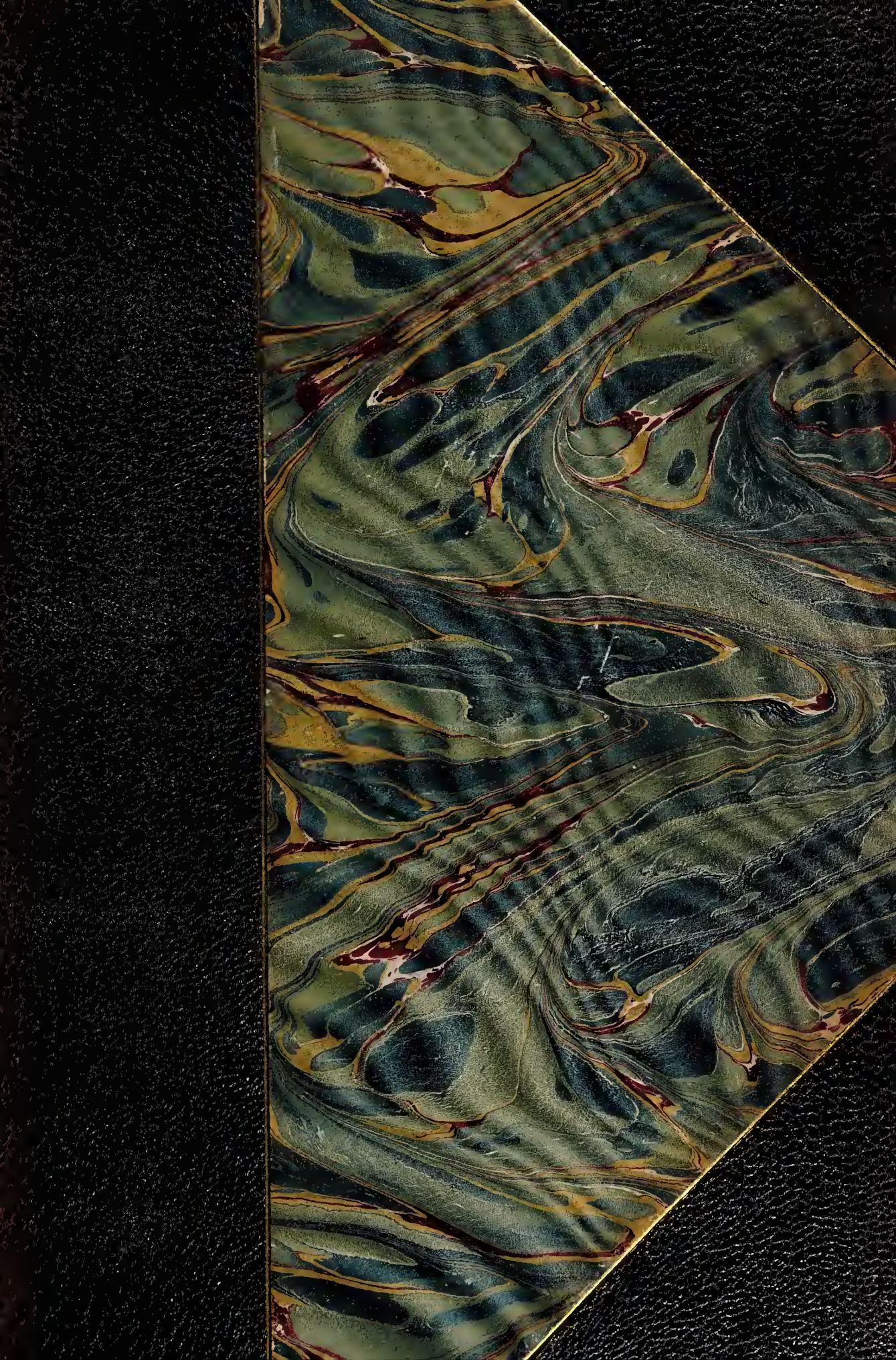

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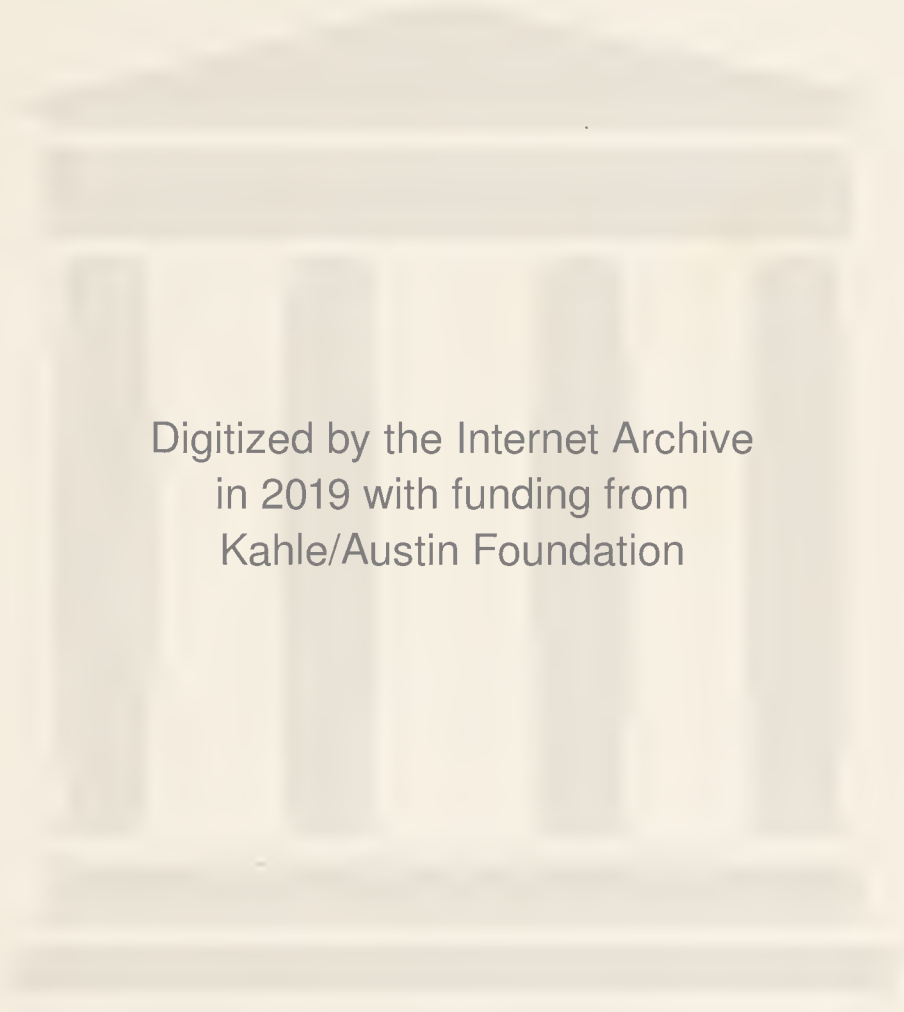

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Henry, Lord Viscount Sidmouth.

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WHITEHALL EDITION

The Miscellaneous Works

OF

LORD MACAULAY

EDITED BY HIS SISTER

LADY TREVELYAN

VOLUME VII.

ILLUSTRATED

G. P. PUTNAM'S SONS
NEW YORK AND LONDON
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BIOGRAPHIES

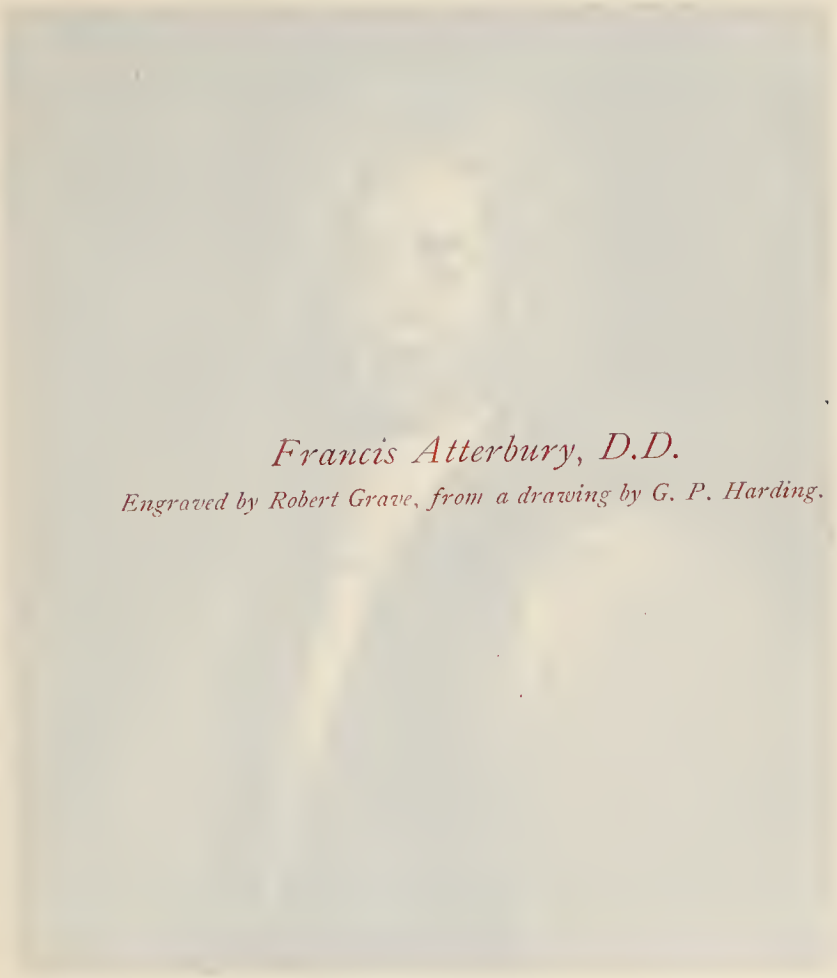
BIOGRAPHIES

FRANCIS ATTERBURY. (December, 1853.)

FRANCIS ATTERBURY, a man who holds a conspicuous place in the political, ecclesiastical, and literary history of England, was born in the year 1662, at Middleton, in Buckinghamshire, a parish of which his father was rector. Francis was educated at Westminster School, and carried thence to Christ Church a stock of learning which, though really scanty, he through life exhibited with such judicious ostentation that superficial observers believed his attainments to be immense. At Oxford, his parts, his taste, and his bold, contemptuous, and imperious spirit soon made him conspicuous. Here he published, at twenty, his first work, a translation of the noble poem of Absalom and Achitophel into Latin verse. Neither the style nor the versification of the young scholar was that of the Augustan age. In English composition he succeeded much better. In 1687 he distinguished himself among many able men who wrote in defence of the Church of England, then persecuted by James the Second, and calumniated by apostates who had for

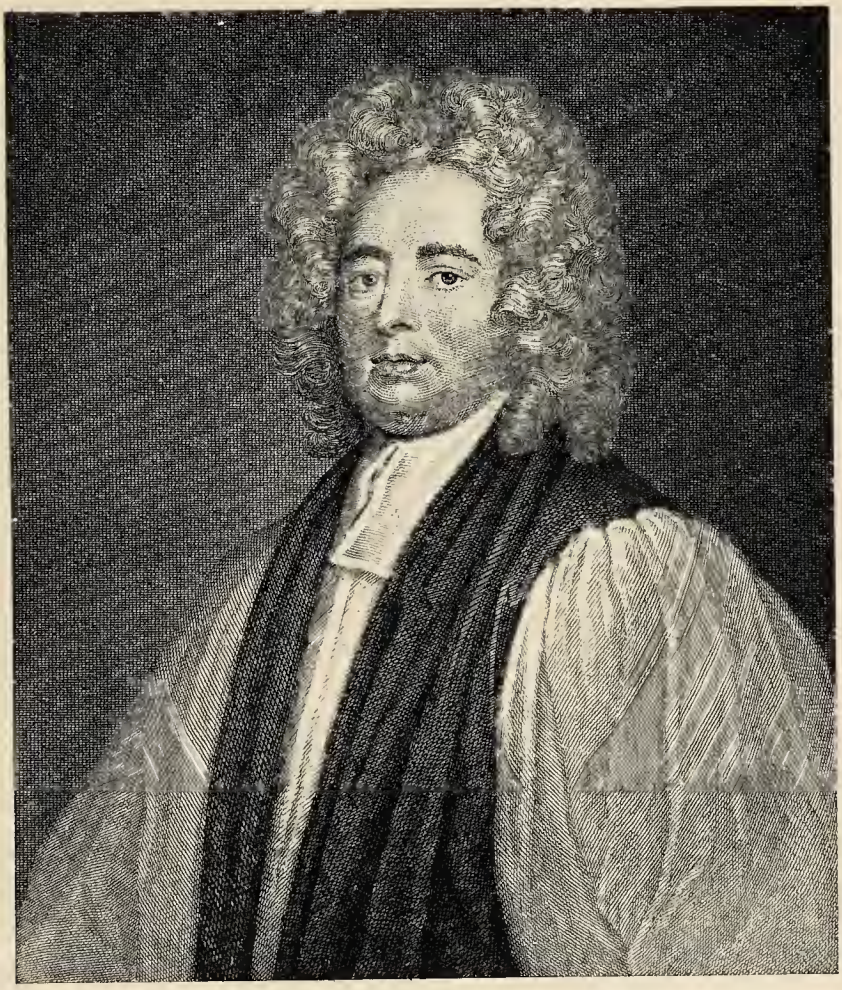
lucre quitted her communion. Among these apostates none was more active or malignant than Obadiah Walker, who was master of University College, and who had set up there, under the royal patronage, a press for printing tracts against the established religion. In one of these tracts, written apparently by Walker himself, many aspersions were thrown on Martin Luther. Atterbury undertook to defend the great Saxon Reformer, and performed that task in a manner singularly characteristic. Whoever examines his reply to Walker will be struck by the contrast between the feebleness of those parts which are argumentative and defensive, and the vigor of those parts which are rhetorical and aggressive. The Papists were so much galled by the sarcasms and invectives of the young polemic that they raised a cry of treason, and accused him of having, by implication, called King James a Judas.

After the Revolution, Atterbury, though bred in the doctrines of non-resistance and passive obedience, readily swore fealty to the new government. In no long time he took holy orders. He occasionally preached in London with an eloquence which raised his reputation, and soon had the honor of being appointed one of the royal chaplains. But he ordinarily resided at Oxford, where he took an active part in academical business, directed the classical studies of the undergraduates of his college, and was the chief adviser and assistant of Dean Aldrich, a divine now chiefly remembered by his catches, but renowned among his contemporaries as a scholar, a Tory, and a High-Churchman. It was the practice (not a very judicious practice) of Aldrich to employ the most promising youths of his college in



Francis Atterbury, D.D.

Engraved by Robert Grave, from a drawing by G. P. Harding.



editing Greek and Latin books. Among the studious and well-disposed lads who were, unfortunately for themselves, induced to become teachers of philology when they should have been content to be learners, was Charles Boyle, son of the Earl of Orrery, and nephew of Robert Boyle, the great experimental philosopher. The tasks assigned to Charles Boyle was to prepare a new edition of one of the most worthless books in existence. It was a fashion among those Greeks and Romans who cultivated rhetoric as an art to compose epistles and harangues in the names of eminent men. Some of these counterfeits are fabricated with such exquisite taste and skill that it is the highest achievement of criticism to distinguish them from originals. Others are so feebly and rudely executed that they can hardly impose on an intelligent schoolboy. The best specimen which has come down to us is, perhaps, the oration for Marcellus, such an imitation of Tully's eloquence as Tully would himself have read with wonder and delight. The worst specimen is, perhaps, a collection of letters purporting to have been written by that Phalaris who governed Agrigentum more than five hundred years before the Christian era. The evidence, both internal and external, against the genuineness of these letters, is overwhelming. When, in the fifteenth century, they emerged, in company with much that was far more valuable, from their obscurity, they were pronounced spurious by Politian, the greatest scholar of Italy, and by Erasmus, the greatest scholar on our side of the Alps. In truth, it would be as easy to persuade an educated Englishman that one of Johnson's Ramblers was the work of William Wallace as to persuade a man like Erasmus that a pedantic exercise,

composed in the trim and artificial Attic of the time of Julian, was a despatch written by a crafty and ferocious Dorian, who roasted people alive many years before there existed a volume of prose in the Greek language. But, though Christ Church could boast of many good Latinists, of many good English writers, and of a greater number of clever and fashionable men of the world than belonged to any other academic body, there was not then in the college a single man capable of distinguishing between the infancy and the dotage of Greek literature. So superficial, indeed, was the learning of the rulers of this celebrated society that they were charmed by an essay which Sir William Temple published in praise of the ancient writers. It now seems strange that even the eminent public services, the deserved popularity, and the graceful style of Temple should have saved so silly a performance from universal contempt. Of the books which he most vehemently eulogized, his eulogies proved that he knew nothing. In fact, he could not read a line of the language in which they were written. Among the many other foolish things, he said that the letters of Phalaris were the oldest letters and also the best in the world. Whatever Temple wrote attracted notice. People who had never heard of the Epistles of Phalaris began to inquire about them. Aldrich, who knew very little Greek, took the word of Temple, who knew none, and desired Boyle to prepare a new edition of these admirable compositions which, having long slept in obscurity, had become on a sudden objects of general interest.

The edition was prepared with the help of Atterbury, who was Boyle's tutor, and of some other members of the college. It was an edition such as might be ex-

pected from people who would stoop to edit such a book. The notes were worthy of the text ; the Latin version worthy of the Greek original. The volume would have been forgotten in a month, had not a misunderstanding about a manuscript arisen between the young editor and the greatest scholar that had appeared in Europe since the revival of letters, Richard Bentley. The manuscript was in Bentley's keeping. Boyle wished it to be collated. A mischief-making bookseller informed him that Bentley had refused to lend it, which was false, and also that Bentley had spoken contemptuously of the letters attributed to Phalaris, and of the critics who were taken in by such counterfeits, which was perfectly true. Boyle, much provoked, paid in his preface, a bitterly ironical compliment to Bentley's courtesy. Bentley revenged himself by a short dissertation, in which he proved that the epistles were spurious and the new edition of them worthless ; but he treated Boyle personally with civility as a young gentleman of great hopes, whose love of learning was highly commendable, and who deserved to have had better instructors.

Few things in literary history are more extraordinary than the storm which this little dissertation raised. Bentley had treated Boyle with forbearance ; but he had treated Christ Church with contempt, and the Christ Church men, wherever dispersed, were as much attached to their college as a Scotchman to his country or a Jesuit to his order. Their influence was great. They were dominant at Oxford, powerful in the Inns of Court and in the College of Physicians, conspicuous in Parliament and in the literary and fashionable circles of London. Their unanimous cry was that the honor

of the college must be vindicated, that the insolent Cambridge pedant must be put down. Poor Boyle was unequal to the task, and disinclined to it. It was therefore assigned to his tutor, Atterbury.

The answer to Bentley, which bears the name of Boyle, but which was, in truth, no more the work of Boyle than the letters to which the controversy related were the work of Phalaris, is now read only by the curious, and will, in all probability, never be reprinted again. But it had its day of noisy popularity. It was to be found, not only in the studies of men of letters, but on the tables of the most brilliant drawing-rooms of Soho Square and Covent Garden. Even the beaus and coquettes of that age, the Wildairs and the Lady Lurewells, the Mirabels and the Millamants, congratulated each other on the way in which the gay young gentleman, whose erudition sat so easily upon him, and who wrote with so much pleasantry and good-breeding about the Attic dialect and the anapæstic measure, Sicilian talents and Thericlean cups, had bantered the queer prig of a doctor. Nor was the applause of the multitude undeserved. The book is, indeed, Atterbury's masterpiece, and gives a higher notion of his powers than any of those works to which he put his name. That he was altogether in the wrong on the main question, and on all the collateral questions springing out of it ; that his knowledge of the language, the literature, and the history of Greece was not equal to what many freshmen now bring up every year to Cambridge and Oxford, and that some of his blunders seem rather to deserve a flogging than a refutation, is true ; and therefore it is that his performance is in the highest degree interesting and valuable to a judicious reader.

It is good by reason of its exceeding badness. It is the most extraordinary instance that exists of the art of making much show with little substance. There is no difficulty, says the steward of Molière's miser, in giving a fine dinner with plenty of money : the really great cook is he who can set out a banquet with no money at all. That Bentley should have written excellently on ancient chronology and geography, on the development of the Greek language, and the origin of the Greek drama, is not strange. But that Atterbury should, during some years, have been thought to have treated these subjects much better than Bentley is strange indeed. It is true that the champion of Christ Church had all the help which the most celebrated members of that society could give him. Smalridge contributed some very good wit ; Friend and others some very bad archæology and philology. But the greater part of the volume was entirely Atterbury's : what was not his own was revised and retouched by him ; and the whole bears the mark of his mind—a mind inexhaustibly rich in all the resources of controversy, and familiar with all the artifices which make falsehood look like truth, and ignorance like knowledge. He had little gold ; but he beat that out to the very thinnest leaf, and spread it over so vast a surface that to those who judged by a glance, and who did not resort to balances and tests, the glittering heap of worthless matter which he produced seemed to be an inestimable treasure of massy bullion. Such arguments as he had he placed in the clearest light. Where he had no arguments he resorted to personalities, sometimes serious, generally ludicrous, always clever and cutting. But, whether he was grave or merry, whether he reasoned

or sneered, his style was always pure, polished and easy.

Party spirit then ran high ; yet, though Bentley ranked among Whigs, and Christ Church was a stronghold of Toryism, Whigs joined with Tories in applauding Atterbury's volume. Garth insulted Bentley and extolled Boyle in lines which are now never quoted except to be laughed at. Swift, in his Battle of the Books, introduced with much pleasantry Boyle, clad in armor, the gift of all the gods, and directed by Apollo in the form of a human friend, for whose name a blank is left which may easily be filled up. The youth, so accoutred and so assisted, gains an easy victory over his uncourteous and boastful antagonist. Bentley, meanwhile, was supported by the consciousness of an immeasurable superiority, and encouraged by the voices of the few who were really competent to judge of the combat. "No man," he said, justly and nobly, "was ever written down but by himself." He spent two years in preparing a reply, which will never cease to be read and prized while the literature of ancient Greece is studied in any part of the world. This reply proved, not only that the letters ascribed to Phalaris were spurious, but that Atterbury, with all his wit, his eloquence, his skill in controversial fence, was the most audacious pretender that ever wrote about what he did not understand. But to Atterbury this exposure was matter of indifference. He was now engaged in a dispute about matters far more important and exciting than the laws of Zaleucus and the laws of Charondas. The rage of religious factions was extreme. High Church and Low Church divided the nation. The great majority of the clergy were on the High-Church

side ; the majority of King William's bishops were inclined to latitudinarianism. A dispute arose between the two parties touching the extent of the powers of the Lower House of Convocation. Atterbury thrust himself eagerly into the front rank of the High-Churchmen. Those who take a comprehensive and impartial view of his whole career will not be disposed to give him credit for religious zeal. But it was his nature to be vehement and pugnacious in the cause of every fraternity of which he was a member. He had defended the genuineness of a spurious book simply because Christ Church had put forth an edition of that book ; he now stood up for the clergy against the civil power simply because he was a clergyman, and for the priests against the episcopal order simply because he was as yet only a priest. He asserted the pretensions of the class to which he belonged in several treatises written with much wit, ingenuity, audacity, and acrimony. In this, as in his first controversy, he was opposed to antagonists whose knowledge of the subject in dispute was far superior to his ; but in this, as in his first controversy, he imposed on the multitude by bold assertion, by sarcasm, by declamation, and, above all, by his peculiar knack of exhibiting a little erudition in such a manner as to make it look like a great deal. Having passed himself off on the world as a greater master of classical learning than Bentley, he now passed himself off as a greater master of ecclesiastical learning than Wake or Gibson. By the great body of the clergy he was regarded as the ablest and most intrepid tribune that had ever defended their rights against the oligarchy of prelates. The Lower House of Convocation voted him thanks for his services ; the University of Oxford

created him a doctor of divinity; and soon after the accession of Anne, while the Tories still had the chief weight in the government, he was promoted to the deanery of Carlisle.

Soon after he had obtained this preferment, the Whig party rose to ascendency in the State. From that party he could expect no favor. Six years elapsed before a change of fortune took place. At length, in the year 1710, the prosecution of Sacheverell produced a formidable explosion of High-Church fanaticism. At such a moment Atterbury could not fail to be conspicuous. His inordinate zeal for the body to which he belonged, his turbulent and aspiring temper, his rare talents for agitation and for controversy, were again signally displayed. He bore a chief part in framing that artful and eloquent speech which the accused divine pronounced at the bar of the Lords, and which presents a singular contrast to the absurd and scurrilous sermon which had very unwisely been honored with impeachment. During the troubled and anxious months which followed the trial, Atterbury was among the most active of those pamphleteers who inflamed the nation against the Whig ministry and the Whig Parliament. When the ministry had been changed and the Parliament dissolved, rewards were showered upon him. The Lower House of Convocation elected him prolocutor. The Queen appointed him Dean of Christ Church on the death of his old friend and patron Aldrich. The college would have preferred a gentler ruler. Nevertheless, the new head was received with every mark of honor. A congratulatory oration in Latin was addressed to him in the magnificent vestibule of the hall; and he, in reply, professed the warmest attachment

to the venerable house in which he had been educated, and paid many gracious compliments to those over whom he was to preside. But it was not in his nature to be a mild or an equitable governor. He had left the chapter of Carlisle distracted by quarrels. He found Christ Church at peace; but in three months his despotic and contentious temper did at Christ Church what it had done at Carlisle. He was succeeded in both his deaneries by the humane and accomplished Smalridge, who gently complained of the state in which both had been left. "Atterbury goes before and sets everything on fire. I come after him with a bucket of water." It was said by Atterbury's enemies that he was made a bishop because he was so bad a dean. Under his administration Christ Church was in confusion, scandalous altercations took place, opprobrious words were exchanged; and there was reason to fear that the great Tory college would be ruined by the tyranny of the great Tory doctor. He was soon removed to the bishopric of Rochester, which was then always united with the deanery of Westminster. Still higher dignities seemed to be before him. For, though there were many able men on the episcopal bench, there was none who equalled or approached him in parliamentary talents. Had his party continued in power, it is not improbable that he would have been raised to the archbishopric of Canterbury. The more splendid his prospects, the more reason he had to dread the accession of a family which was well known to be partial to the Whigs. There is every reason to believe that he was one of those politicians who hoped that they might be able, during the life of Anne, to prepare matters in such a way that at her decease there might be

little difficulty in setting aside the Act of Settlement and placing the Pretender on the throne. Her sudden death confounded the projects of these conspirators. Atterbury, who wanted no kind of courage, implored his confederates to proclaim James the Third, and offered to accompany the heralds in lawn sleeves. But he found even the bravest soldiers of his party irresolute, and exclaimed, not, it is said, without interjections which ill became the mouth of a father of the Church, that the best of all causes and the most precious of all moments had been pusillanimously thrown away. He acquiesced in what he could not prevent, took the oaths to the House of Hanover, and at the coronation officiated with the outward show of zeal, and did his best to ingratiate himself with the royal family. But his servility was requited with cold contempt. No creature is so revengeful as a proud man who has humbled himself in vain. Atterbury became the most factious and pertinacious of all the opponents of the government. In the House of Lords his oratory, lucid, pointed, lively, and set off with every grace of pronunciation and gesture, extorted the attention and admiration even of a hostile majority. Some of the most remarkable protests which appear in the journals of the Peers were drawn up by him; and in some of the bitterest of those pamphlets which called on the English to stand up for their country against the aliens who had come from beyond the seas to oppress and plunder her, critics easily detected his style. When the rebellion of 1715 broke out, he refused to sign the paper in which the bishops of the province of Canterbury declared their attachment to the Protestant succession. He busied himself in electioneering, especially at Westminster,

where, as dean, he possessed great influence; and was, indeed, strongly suspected of having once set on a riotous mob to prevent his Whig fellow-citizens from polling.

After having been long in indirect communication with the exiled family, he, in 1717, began to correspond directly with the Pretender. The first letter of the correspondence is extant. In that letter Atterbury boasts of having, during many years past, neglected no opportunity of serving the Jacobite cause. "My daily prayer," he says, "is that you may have success. May I live to see that day, and live no longer than I do what is in my power to forward it." It is to be remembered that he who wrote thus was a man bound to set to the Church of which he was an overseer an example of strict probity; that he had repeatedly sworn allegiance to the House of Brunswick; that he had assisted in placing the crown on the head of George the First; and that he had abjured James the Third, "without equivocation or mental reservation, on the true faith of a Christian."

It is agreeable to turn from his public to his private life. His turbulent spirit, wearied with faction and treason, now and then required repose, and found it in domestic endearments, and in the society of the most illustrious of the living and of the dead. Of his wife little is known; but between him and his daughter there was an affection singularly close and tender. The gentleness of his manners when he was in the company of a few friends was such as seemed hardly credible to those who knew him only by his writings and speeches. The charm of his "softer hour" has been commemorated by one of those friends in imperishable verse. Though Atterbury's classical attain-

ments were not great, his taste in English literature was excellent ; and his admiration of genius was so strong that it overpowered even his political and religious antipathies. His fondness for Milton, the mortal enemy of the Stuarts and of the Church, was such as to many Tories seemed a crime. On the sad night on which Addison was laid in the Chapel of Henry the Seventh, the Westminster boys remarked that Atterbury read the funeral service with a peculiar tenderness and solemnity. The favorite companions, however, of the great Tory prelate were, as might have been expected, men whose politics had at least a tinge of Toryism. He lived on friendly terms with Swift, Arbuthnot, and Gay. With Prior he had a close intimacy, which some misunderstanding about public affairs at last dissolved. Pope found in Atterbury not only a warm admirer, but a most faithful, fearless, and judicious adviser. The poet was a frequent guest at the episcopal palace among the elms of Bromley, and entertained not the slightest suspicion that his host, now declining in years, confined to an easy-chair by gout, and apparently devoted to literature, was deeply concerned in criminal and perilous designs against the government.

The spirit of the Jacobites had been cowed by the events of 1715. It revived in 1721. The failure of the South-sea project, the panic in the money-market, the downfall of great commercial houses, the distress from which no part of the kingdom was exempt, had produced general discontent. It seemed not improbable that at such a moment an insurrection might be successful. An insurrection was planned. The streets of London were to be barricaded ; the Tower and the

Bank were to be surprised ; King George, his family, and his chief captains and councillors were to be arrested, and King James was to be proclaimed. The design became known to the Duke of Orleans, Regent of France, who was on terms of friendship with the House of Hanover. He put the English government on its guard. Some of the chief malcontents were committed to prison ; and among them was Atterbury. No bishop of the Church of England had been taken into custody since that memorable day when the applauses and prayers of all London had followed the seven bishops to the gate of the Tower. The Opposition entertained some hope that it might be possible to excite among the people an enthusiasm resembling that of their fathers, who rushed into the waters of the Thames to implore the blessing of Sancroft. Pictures of the heroic confessor in his cell were exhibited at the shop windows. Verses in his praise were sung about the streets. The restraints by which he was prevented from communicating with his accomplices were represented as cruelties worthy of the dungeons of the Inquisition. Strong appeals were made to the priesthood. Would they tamely permit so gross an insult to be offered to their cloth ? Would they suffer the ablest, the most eloquent member of their profession, the man who had so often stood up for their rights against the civil power, to be treated like the vilest of mankind ? There was considerable excitement ; but it was allayed by a temperate and artful letter to the clergy, the work, in all probability, of Bishop Gibson, who stood high in the favor of Walpole, and shortly after became minister for ecclesiastical affairs.

Atterbury remained in close confinement during some

months. He had carried on his correspondence with the exiled family so cautiously that the circumstantial proofs of his guilt, though sufficient to produce entire moral conviction, were not sufficient to justify legal conviction. He could be reached only by a bill of pains and penalties. Such a bill the Whig party, then decidedly predominant in both Houses, was quite prepared to support. Many hot-headed members of that party were eager to follow the precedent which had been set in the case of Sir John Fenwick, and to pass an act for cutting off the bishop's head. Cadogan, who commanded the army, a brave soldier, but a headstrong politician, is said to have exclaimed with great vehemence, "Fling him to the lions in the Tower." But the wiser and more humane Walpole was always unwilling to shed blood; and his influence prevailed. When Parliament met, the evidence against the bishop was laid before committees of both Houses. Those committees reported that his guilt was proved. In the Commons a resolution pronouncing him a traitor was carried by nearly two to one. A bill was then introduced which provided that he should be deprived of his spiritual dignities, that he should be banished for life, and that no British subject should hold any intercourse with him except by the royal permission.

This bill passed the Commons with little difficulty. For the bishop, though invited to defend himself, chose to reserve his defence for the assembly of which he was a member. In the Lords the contest was sharp. The young Duke of Wharton, distinguished by his parts, his dissoluteness, and his versatility, spoke for Atterbury with great effect; and Atterbury's own voice was heard for the last time by that unfriendly audience

which had so often listened to him with mingled aversion and delight. He produced few witnesses ; nor did those witnesses say much that could be of service to him. Among them was Pope. He was called to prove that, while he was an inmate of the palace at Bromley, the bishop's time was completely occupied by literary and domestic matters, and that no leisure was left for plotting. But Pope, who was quite unaccustomed to speak in public, lost his head, and, as he afterwards owned, though he had only ten words to say, made two or three blunders.

The bill finally passed the Lords by eighty-three votes to forty-three. The bishops, with a single exception, were in the majority. Their conduct drew on them a sharp taunt from Lord Bathurst, a warm friend of Atterbury and a zealous Tory. "The wild Indians," he said, "give no quarter, because they believe that they shall inherit the skill and prowess of every adversary whom they destroy. Perhaps the animosity of the right reverend prelates to their brother may be explained in the same way."

Atterbury took leave of those whom he loved with a dignity and tenderness worthy of a better man. Three fine lines of his favorite poet were often in his mouth :

> "Some natural tears he dropped, but wiped them soon :
> The world was all before him, where to choose
> His place of rest, and Providence his guide."

At parting he presented Pope with a Bible, and said, with a disingenuousness of which no man who had studied the Bible to much purpose would have been guilty, "If ever you learn that I have any dealings with the Pretender, I give you leave to say that my

punishment is just." Pope at this time really believed the bishop to be an injured man. Arbuthnot seems to have been of the same opinion. Swift, a few months later, ridiculed with great bitterness, in the Voyage to Laputa, the evidence which had satisfied the two Houses of Parliament. Soon, however, the most partial friends of the banished prelate ceased to assert his innocence, and contented themselves with lamenting and excusing what they could not defend. After a short stay at Brussels, he had taken up his abode at Paris, and had become the leading man among the Jacobite refugees who were assembled there. He was invited to Rome by the Pretender, who then held his mock court under the immediate protection of the Pope. But Atterbury felt that a bishop of the Church of England would be strangely out of place at the Vatican, and declined the invitation. During some months, however, he might flatter himself that he stood high in the good graces of James. The correspondence between the master and servant was constant. Atterbury's merits were warmly acknowledged ; his advice was respectfully received ; and he was, as Bolingbroke had been before him, the prime-minister of a king without a kingdom. But the new favorite found, as Bolingbroke had found before him, that it was quite as hard to keep the shadow of power under a vagrant and mendicant prince as to keep the reality of power at Westminster. Though James had neither territories nor revenues, neither army nor navy, there was more faction and more intrigue among his courtiers than among those of his successful rival. Atterbury soon perceived that his counsels were disregarded, if not distrusted. His proud spirit was deeply wounded. He quitted Paris, fixed his residence at

Montpellier, gave up politics, and devoted himself entirely to letters. In the sixth year of his exile he had so severe an illness that his daughter, herself in very delicate health, determined to run all risk that she might see him once more. Having obtained a license from the English government, she went by sea to Bordeaux, but landed there in such a state that she could travel only by boat or in a litter. Her father, in spite of his infirmities, set out from Montpellier to meet her ; and she, with the impatience which is often the sign of approaching death hastened towards him. Those who were about her in vain implored her to travel slowly. She said that every hour was precious, that she only wished to see her papa and to die. She met him at Toulouse, embraced him, received from his hand the sacred bread and wine, and thanked God that they had passed one day in each other's society before they parted forever. She died that night.

It was some time before even the strong mind of Atterbury recovered from this cruel blow. As soon as he was himself again, he became eager for action and conflict ; for grief, which disposes gentle natures to retirement, to inaction, and to meditation, only makes restless spirits more restless. The Pretender, dull and bigoted as he was, had found out that he had not acted wisely in parting with one who, though a heretic, was, in abilities and accomplishments, the foremost man of the Jacobite party. The bishop was courted back, and was without much difficulty induced to return to Paris and to become once more the phantom minister of a phantom monarchy. But his long and troubled life was drawing to a close. To the last, however, his intellect retained all its keenness and vigor. He learned,

in the ninth year of his banishment, that he had been accused by Oldmixon—as dishonest and malignant a scribbler as any that has been saved from oblivion by the Dunciad—of having, in concert with other Christ Church men, garbled Clarendon's History of the Rebellion. The charge, as respected, Atterbury, had not the slightest foundation ; for he was not one of the editors of the History, and never saw it till it was printed. He published a short vindication of himself which is a model in its kind, luminous, temperate, and dignified. A copy of this little work he sent to the Pretender, with a letter singularly eloquent and graceful. It was impossible, the old man said, that he should write anything on such a subject without being reminded of the resemblance between his own fate and that of Clarendon. They were the only two English subjects that had ever been banished from their country and debarred from all communication with their friends by act of Parliament. But here the resemblance ended. One of the exiles had been so happy as to bear a chief part in the restoration of the royal house. All that the other could now do was to die asserting the rights of that house to the last. A few weeks after this letter was written, Atterbury died. He had just completed his seventieth year.

His body was brought to England, and laid, with great privacy, under the nave of Westminster Abbey. Only three mourners followed the coffin. No inscription marks the grave. That the epitaph with which Pope honored the memory of his friend does not appear on the walls of the great national cemetery is no subject of regret ; for nothing worse was ever written by Colley Cibber.

Those who wish for more complete information about Atterbury may easily collect it from his sermons and his controversial writings, from the report of the parliamentary proceedings against him (which will be found in the State Trials), from the five volumes of his correspondence (edited by Mr. Nichols), and from the first volume of the Stuart Papers (edited by Mr. Glover). A very indulgent but a very interesting account of the Bishop's political career will be found in Lord Mahon's valuable History of England.

JOHN BUNYAN. (May, 1854.)

JOHN BUNYAN, the most popular religious writer in the English language, was born at Elstow, about a mile from Bedford, in the year 1628. He may be said to have been born a tinker. The tinkers then formed an hereditary caste which was held in no high estimation. They were generally vagrants and pilferers, and were often confounded with the gypsies, whom, in truth, they nearly resembled. Bunyan's father was more respectable than most of the tribe. He had a fixed residence, and was able to send his son to a village school where reading and writing were taught.

The years of John's boyhood were those during which the Puritan spirit was in the highest vigor all over England ; and nowhere had that spirit more influence than in Bedfordshire. It is not wonderful, therefore, that a lad to whom nature had given a powerful imagination, and sensibility which amounted to a disease, should have been early haunted by religious terrors. Before he was ten, his sports were interrupted by fits of remorse and despair ; and his sleep was disturbed by dreams of fiends trying to fly away with him. As he grew older, his mental conflicts became still more violent. The strong language in which he described them

has strangely misled all his biographers except Mr. Southey. It has long been an ordinary practice with pious writers to cite Bunyan as an instance of the supernatural power of divine grace to rescue the human soul from the lowest depths of wickedness. He is called in one book the most notorious of profligates ; in another, the brand plucked from the burning. He is designated in Mr. Ivimey's History of the Baptists as the depraved Bunyan, the wicked tinker of Elstow. Mr. Ryland, a man once of great note among the Dissenters, breaks out into the following rhapsody: " No man of common sense and common integrity can deny that Bunyan was a practical atheist ; a worthless, contemptible infidel ; a vile rebel to God and goodness; a common profligate; a soul-despising, a soul-murdering, a soul-damning, thoughtless wretch as could exist on the face of the earth. Now be astonished, O heavens, to eternity ! and wonder, O earth and hell ! while time endures. Behold this very man become a miracle of mercy, a mirror of wisdom, goodness, holiness, truth, and love." But whoever takes the trouble to examine the evidence will find that the good men who wrote this had been deceived by a phraseology which, as they had been hearing it and using it all their lives, they ought to have understood better. There cannot be a greater mistake than to infer, from the strong expressions in which a devout man bemoans his exceeding sinfulness, that he has led a worse life than his neighbors. Many excellent persons, whose moral character from boyhood to old age has been free from any stain discernible to their fellow-creatures, have, in their autobiographies and diaries, applied to themselves, and doubtless with sincerity, epithets as severe as could be applied to

Titus Oates or Mrs. Brownrigg. It is quite certain that Bunyan was at eighteen what, in any but the most austerely Puritanical circles, would have been considered as a young man of singular gravity and innocence. Indeed, it may be remarked that he, like many other penitents who, in general terms, acknowledge themselves to have been the worst of mankind, fired up and stood vigorously on his defence whenever any particular charge was brought against him by others. He declares, it is true, that he had let loose the reins on the neck of his lusts, that he had delighted in all transgressions against the divine law, and that he had been the ringleader of the youth of Elstow in all manner of vice. But, when those who wished him ill accused him of licentious amours, he called on God and the angels to attest his purity. No woman, he said, in heaven, earth, or hell, could charge him with having ever made any improper advances to her. Not only had he been strictly faithful to his wife ; but he had, even before his marriage, been perfectly spotless. It does not appear from his own confessions, or from the railings of his enemies, that he ever was drunk in his life. One bad habit he contracted, that of using profane language ; but he tells us that a single reproof cured him so effectually that he never offended again. The worst that can be laid to the charge of this poor youth whom it has been the fashion to represent as the most desperate of reprobates, as a village Rochester, is that he had a great liking for some diversions, quite harmless in themselves, but condemned by the rigid precisians among whom he lived, and for whose opinion he had a great respect. The four chief sins of which he was guilty were dancing, ringing the bells of the

parish church, playing at tipcat, and reading the History of Sir Bevis of Southampton. A rector of the school of Laud would have held such a young man up to the whole parish as a model. But Bunyan's notions of good and evil had been learned in a very different school ; and he was made miserable by the conflict between his tastes and his scruples.

When he was about seventeen, the ordinary course of his life was interrupted by an event which gave a lasting color to his thoughts. He enlisted in the Parliamentary army, and served during the decisive campaign of 1645. All that we know of his military career is that at the siege of Leicester one of his comrades who had taken his post was killed by a shot from the town. Bunyan ever after considered himself as having been saved from death by the special interference of Providence. It may be observed that his imagination was strongly impressed by the glimpse which he had caught of the pomp of war. To the last he loved to draw his illustrations of sacred things from camps and fortresses, from guns, drums, trumpets, flags of truce, and regiments arrayed each under its own banner. His Greatheart, his Captain Boanerges, and his Captain Credence are evidently portraits of which the originals were among those martial saints who fought and expounded in Fairfax's army.

In a few months Bunyan returned home and married. His wife had some pious relations, and brought him as her only portion some pious books. And now his mind, excitable by nature, very imperfectly disciplined by education, and exposed, without any protection, to the infectious virulence of the enthusiasm which was then epidemic in England, began to be fearfully disordered.

In outward things he soon became a strict Pharisee. He was constant in attendance at prayers and sermons. His favorite amusements were one after another relinquished, though not without many painful struggles. In the middle of a game at tipcat he paused, and stood staring wildly upwards with his stick in his hand. He had heard a voice asking him whether he would leave his sins and go to heaven, or keep his sins and go to hell ; and he had seen an awful countenance frowning on him from the sky. The odious vice of bell-ringing he renounced ; but he still, for a time, ventured to go to the church-tower and look on while others pulled the ropes. But soon the thought struck him that if he persisted in such wickedness the steeple would fall on his head ; and he fled in terror from the accursed place. To give up dancing on the village green was still harder ; and some months elapsed before he had the fortitude to part with this darling sin. When this last sacrifice had been made, he was, even when tried by the maxims of that austere time, faultless. All Elstow talked of him as an eminently pious youth. But his own mind was more unquiet than ever. Having nothing more to do in the way of visible reformation, yet finding in religion no pleasures to supply the place of the juvenile amusements which he had relinquished, he began to apprehend that he lay under some special malediction; and he was tormented by a succession of fantasies which seemed likely to drive him to suicide or to bedlam.

At one time he took it into his head that all persons of Israelite blood would be saved, and tried to make out that he partook of that blood ; but his hopes were speedily destroyed by his father, who seems to have had no ambition to be regarded as a Jew.

John Bunyan's cottage and forge at Elstow.

Redrawn from an old print.

At another time Bunyan was disturbed by a strange dilemma : " If I have not faith, I am lost ; if I have faith, I can work miracles." He was tempted to cry to the puddles between Elstow and Bedford, " Be ye dry," and to stake his eternal hopes on the event.

Then he took up a notion that the day of grace for Bedford and the neighboring villages was past ; that all who were to be saved in that part of England were already converted ; and that he had begun to pray and strive some months too late.

Then he was harassed by doubts whether the Turks were not in the right, and the Christians in the wrong. Then he was troubled by a maniacal impulse which prompted him to pray to the trees, to a broomstick, to the parish bull. As yet, however, he was only entering the Valley of the Shadow of Death. Soon the darkness grew thicker. Hideous forms floated before him. Sounds of cursing and wailing were in his ears. His way ran through stench and fire, close to the mouth of the bottomless pit. He began to be haunted by a strange curiosity about the unpardonable sin, and by a morbid longing to commit it. But the most frightful of all the forms which his disease took was a propensity to utter blasphemy, and especially to renounce his share in the benefits of the redemption. Night and day, in bed, at table, at work, evil spirits, as he imagined, were repeating close to his ear the words, " Sell him, sell him." He struck at the hobgoblins ; he pushed them from him ; but still they were ever at his side. He cried out in answer to them, hour after hour, " Never, never ! not for thousands of worlds ! not for thousands." At length, worn out by this long agony, he suffered the fatal words to escape him, " Let him

go, if he will." Then his misery became more fearful than ever. He had done what could not be forgiven. He had forfeited his part of the great sacrifice. Like Esau, he had sold his birthright; and there was no longer any place for repentance. "None," he afterwards wrote, "knows the terror of those days but myself." He has described his sufferings with singular energy, simplicity, and pathos. He envied the brutes; he envied the very stones in the street and the tiles on the houses. The sun seemed to withhold its light and warmth from him. His body, though cast in a sturdy mould, and though still in the highest vigor of youth, trembled whole days together with the fear of death and judgment. He fancied that this trembling was the sign set on the worst reprobates—the sign which God had put on Cain. The unhappy man's emotion destroyed his power of digestion. He had such pains that he expected to burst asunder like Judas, whom he regarded as his prototype.

Neither the books which Bunyan read nor the advisers whom he consulted were likely to do much good in a case like his. His small library had received a most unseasonable addition—the account of the lamentable end of Francis Spira. One ancient man of high repute for piety whom the sufferer consulted gave an opinion which might well have produced fatal consequences. "I am afraid," said Bunyan, "that I have committed the sin against the Holy Ghost."—"Indeed," said the old fanatic, "I am afraid that you have."

At length the clouds broke; the light became clearer and clearer; and the enthusiast who had imagined that he was branded with the mark of the first mur-

derer, and destined to the end of the arch-traitor, enjoyed peace and a cheerful confidence in the mercy of God. Years elapsed, however, before his nerves, which had been so perilously overstrained, recovered their tone. When he had joined a Baptist society at Bedford, and was for the first time admitted to partake of the eucharist, it was with difficulty that he could refrain from imprecating destruction on his brethren while the cup was passing from hand to hand. After he had been some time a member of the congregation, he began to preach; and his sermons produced a powerful effect. He was, indeed, illiterate ; but he spoke to illiterate men. The severe training through which he had passed had given him such an experimental knowledge of all the modes of religious melancholy as he could never have gathered from books ; and his vigorous genius, animated by a fervent spirit of devotion, enabled him not only to exercise a great influence over the vulgar, but even to extort the half-contemptuous admiration of scholars. Yet it was long before he ceased to be tormented by an impulse which urged him to utter words of horrible impiety in the pulpit.

Counter-irritants are of as great use in moral as in physical diseases. It should seem that Bunyan was finally relieved from the internal sufferings which had embittered his life by sharp persecution from without. He had been five years a preacher when the Restoration put it in the power of the Cavalier gentlemen and clergymen all over the country to oppress the Dissenters ; and, of all the Dissenters whose history is known to us, he was, perhaps, the most hardly treated. In November, 1660, he was flung into Bedford jail ; and there he remained, with some intervals of partial and

precarious liberty, during twelve years. His persecutors tried to extort from him a promise that he would abstain from preaching ; but he was convinced that he was divinely set apart and commissioned to be a teacher of righteousness ; and he was fully determined to obey God rather than man. He was brought before several tribunals, laughed at, caressed, reviled, menaced, but in vain. He was facetiously told that he was quite right in thinking that he ought not to hide his gift ; but that his real gift was skill in repairing old kettles. He was compared to Alexander the coppersmith. He was told that if he would give up preaching, he should be instantly liberated. He was warned that if he persisted in disobeying the law he would be liable to banishment, and that if he were found in England after a certain time his neck would be stretched. His answer was, "If you let me out to-day, I will preach again to-morrow." Year after year he lay patiently in a dungeon compared with which the worst prison now to be found in the island is a palace. His fortitude is the more extraordinary, because his domestic feelings were unusually strong. Indeed, he was considered by his stern brethren as somewhat too fond and indulgent a parent. He had several small children, and among them a daughter who was blind, and whom he loved with peculiar tenderness. He could not, he said, bear even to let the wind blow on her ; and now she must suffer cold and hunger ; she must beg ; she must be beaten ; "yet," he added, "I must, I must do it." While he lay in prison he could do nothing in the way of his old trade for the support of his family. He determined, therefore, to take up a new trade. He learned to make long-tagged thread laces ; and many thousands

of these articles were furnished by him to the hawkers. While his hands were thus busied, he had other employment for his mind and his lips. He gave religious instruction to his fellow-captives, and formed from among them a little flock of which he was himself the pastor. He studied indefatigably the few books which he possessed. His two chief companions were the Bible and Fox's Book of Martyrs. His knowledge of the Bible was such that he might have been called a living concordance ; and on the margin of his copy of the Book of Martyrs are still legible the ill-spelled lines of doggerel in which he expressed his reverence for the brave sufferers and his implacable enmity to the mystical Babylon.

At length he began to write ; and, though it was some time before he discovered where his strength lay, his writings were not unsuccessful. They were coarse, indeed ; but they showed a keen mother wit, a great command of the homely mother tongue, an intimate knowledge of the English Bible, and a vast and dearly bought spiritual experience. They therefore, when the corrector of the press had improved the syntax and the spelling, were well received by the humbler class of Dissenters.

Much of Bunyan's time was spent in controversy. He wrote sharply against the Quakers, whom he seems always to have held in utter abhorrence. It is, however, a remarkable fact that he adopted one of their peculiar fashions ; his practice was to write not November or December, but eleventh month and twelfth month.

He wrote against the liturgy of the Church of England. No two things, according to him, had less

affinity than the form of prayer and the spirit of prayer. Those, he said with much point, who have most of the spirit of prayer are all to be found in jail ; and those who have most zeal for the form of prayer are all to be found at the ale-house. The doctrinal articles, on the other hand, he warmly praised and defended against some Arminian Clergymen who had signed them. The most acrimonious of all his works is his answer to Edward Fowler, afterwards Bishop of Gloucester, an excellent man, but not free from the taint of Pelagianism.

Bunyan had also a dispute with some of the chiefs of the sect to which he belonged. He doubtless held with perfect sincerity the distinguishing tenet of that sect ; but he did not consider that tenet as one of high importance, and willingly joined in communion with quiet Presbyterians and Independents. The sterner Baptists, therefore, loudly pronounced him a false brother. A controversy arose which long survived the original combatants. In our own time the cause which Bunyan had defended with rude logic and rhetoric against Kiffin and Danvers was pleaded by Robert Hall with an ingenuity and eloquence such as no polemical writer has ever surpassed.

During the years which immediately followed the Restoration, Bunyan's confinement seems to have been strict. But, as the passions of 1660 cooled, as the hatred with which the Puritans had been regarded while their reign was recent gave place to pity, he was less and less harshly treated. The distress of his family, and his own patience, courage, and piety, softened the hearts of his persecutors. Like his own Christian in the cage, he found protectors even among the crowd of Vanity Fair. The bishop of the diocese,

Dr. Barlow, is said to have interceded for him. At length the prisoner was suffered to pass most of his time beyond the walls of the jail, on condition, as it should seem, that he remained within the town of Bedford.

He owed his complete liberation to one of the worst acts of one of the worst governments that England has ever seen. In 1671 the Cabal was in power. Charles the Second had concluded the treaty by which he bound himself to set up the Roman Catholic religion in England. The first step which he took towards that end was to annul, by an unconstitutional exercise of his prerogative, all the penal statutes against the Roman Catholics ; and, in order to disguise his real design, he annulled at the same time the penal statutes against Protestant nonconformists. Bunyan was consequently set at large. In the first warmth of his gratitude, he published a tract in which he compared Charles to that humane and generous Persian king who, though not himself blessed with the light of the true religion, favored the chosen people, and permitted them, after years of captivity, to rebuild their beloved temple. To candid men, who consider how much Bunyan had suffered, and how little he could guess the secret designs of the court, the unsuspicious thankfulness with which he accepted the precious boon of freedom will not appear to require any apology.

Before he left his prison he had begun the book which has made his name immortal. The history of that book is remarkable. The author was, as he tells us, writing a treatise in which he had occasion to speak of the stages of the Christian progress. He compared that progress, as many others had compared it, to a

pilgrimage. Soon his quick wit discovered innumerable points of similarity which had escaped his predecessors. Images came crowding on his mind faster than he could put them into words—quagmires and pits; steep hills; dark and horrible glens; soft vales; sunny pastures ; a gloomy castle of which the court-yard was strewn with the skulls and bones of murdered prisoners ; a town all bustle and splendor, like London on the Lord Mayor's Day ; and the narrow path, straight as a rule could make it, running on up hill and down hill, through city and through wilderness, to the Black River and the Shining Gate. He had found out—as most people would have said by accident ; as he would doubtless have said, by the guidance of Providence—where his powers lay. He had no suspicion, indeed, that he was producing a masterpiece. He could not guess what place his allegory would occupy in English literature ; for of English literature he knew nothing. Those who suppose him to have studied the Faerie Queene might easily be confuted, if this were the proper place for a detailed examination of the passages in which the two allegories have been thought to resemble each other. The only work of fiction, in all probability, with which he could compare his Pilgrim was his old favorite the legend of Sir Bevis of Southampton. He would have thought it a sin to borrow any time from the serious business of his life—from his expositions, his controversies, and his lace tags—for the purpose of amusing himself with what he considered merely as a trifle. It was only, he assures us, at spare moments that he returned to the House Beautiful, the Delectable Mountains, and the Enchanted Ground. He had no assistance. Nobody but himself saw a line

till the whole was complete. He then consulted his pious friends. Some were pleased. Others were much scandalized. It was a vain story, a mere romance, about giants and lions and goblins, and warriors sometimes fighting with monsters and sometimes regaled by fair ladies in stately palaces. The loose atheistical wits at Will's might write such stuff to divert the painted Jezebels of the court; but did it become a minister of the Gospel to copy the evil fashions of the world? There had been a time when the cant of such fools would have made Bunyan miserable. But that time was passed; and his mind was now in a firm and healthy state. He saw that, in employing fiction to make truth clear and goodness attractive, he was only following the example which every Christian ought to propose to himself; and he determined to print.

The Pilgrim's Progress stole silently into the world. Not a single copy of the first edition is known to be in existence. The year of publication has not been ascertained. It is probable that, during some months, the little volume circulated only among poor and obscure sectaries. But soon the irresistible charm of a book which gratified the imagination of the reader with all the action and scenery of a fairy tale; which exercised his ingenuity by setting him to discover a multitude of curious analogies; which interested his feelings for human beings, frail like himself, and struggling with temptations from within and from without; which every moment drew a smile from him by some stroke of quaint yet simple pleasantry, and nevertheless left on his mind a sentiment of reverence for God and of sympathy for man, began to produce its effect. In

Puritanical circles, from which plays and novels were strictly excluded, that effect was such as no work of genius, though it were superior to the Iliad, to Don Quixote, or to Othello, can ever produce on a mind accustomed to indulge in literary luxury. In 1678 came forth a second edition with additions ; and then the demand became immense. In the four following years the book was reprinted six times. The eighth edition, which contains the last improvements made by the author, was published in 1682, the ninth in 1684, the tenth in 1685. The help of the engraver had early been called in; and tens of thousands of children looked with terror and delight on execrable copperplates, which represented Christian thrusting his sword into Apollyon, or writhing in the grasp of Giant Despair. In Scotland, and in some of the colonies, the Pilgrim was even more popular than in his native country. Bunyan has told us, with very pardonable vanity, that in New England his dream was the daily subject of the conversation of thousands, and was thought worthy to appear in the most superb binding. He had numerous admirers in Holland and among the Huguenots of France. With the pleasures, however, he experienced some of the pains of eminence. Knavish booksellers put forth volumes of trash under his name ; and envious scribblers maintained it to be impossible that the poor ignorant tinker should really be the author of the book which was called his.

He took the best way to confound both those who counterfeited him and those who slandered him. He continued to work the gold-field which he had discovered, and to draw from it new treasures, not, indeed, with quite such ease and in quite such abundance as

when the precious soil was still virgin, but yet with success which left all competition far behind. In 1684 appeared the second part of the Pilgrim's Progress. It was soon followed by the Holy War, which, if the Pilgrim's Progress did not exist, would be the best allegory that ever was written.

Bunyan's place in society was now very different from what it had been. There had been a time when many Dissenting ministers who could talk Latin and read Greek had affected to treat him with scorn. But his fame and influence now far exceeded theirs. He had so great an authority among the Baptists that he was popularly called Bishop Bunyan. His episcopal visitations were annual. From Bedford he rode every year to London, and preached there to large and attentive congregations. From London he went his circuit through the country, animating the zeal of his brethren, collecting and distributing alms, and making up quarrels. The magistrates seem, in general, to have given him little trouble. But there is reason to believe that in the year 1685 he was in some danger of again occupying his old quarters in Bedford Jail. In that year the rash and wicked enterprise of Monmouth gave the government a pretext for prosecuting the Nonconformists ; and scarcely one eminent divine of the Presbyterian, Independent, or Baptist persuasion remained unmolested. Baxter was in prison ; Howe was driven into exile ; Henry was arrested. Two eminent Baptists with whom Bunyan had been engaged in controversy were in great peril and distress. Danvers was in danger of being hanged ; and Kiffin's grandsons were actually hanged. The tradition is that, during those evil days, Bunyan was forced to disguise himself

as a wagoner, and that he preached to his congregation at Bedford in a smock-frock, with a cart-whip in his hand. But soon a great change took place. James the Second was at open war with the Church, and found it necessary to court the Dissenters. Some of the creatures of the government tried to secure the aid of Bunyan. They probably knew that he had written in praise of the indulgence of 1672, and therefore hoped that he might be equally pleased with the indulgence of 1687. But fifteen years of thought, observation, and commerce with the world had made him wiser. Nor were the cases exactly parallel. Charles was a professed Protestant ; James was a professed Papist. The object of Charles's indulgence was disguised ; the object of James's indulgence was patent. Bunyan was not deceived. He exhorted his hearers to prepare themselves by fasting and prayer for the danger which menaced their civil and religious liberties, and refused even to speak to the courtier who came down to remodel the corporation of Bedford, and who, as was supposed, had it in charge to offer some municipal dignity to the Bishop of the Baptists.

Bunyan did not live to see the Revolution. In the summer of 1688, he undertook to plead the cause of a son with an angry father, and at length prevailed with the old man not to disinherit the young one. This good work cost the benevolent intercessor his life. He had to ride through heavy rain. He came drenched to his lodings on Snow Hill, was seized with a violent fever, and died in a few days. He was buried in Bunhill Fields ; and the spot where he lies is still regarded by the Nonconformists with a feeling which seems scarcely in harmony with the stern spirit of their the-

ology. Many Puritans, to whom the respect paid by Roman Catholics to the relics and tombs of saints seemed childish or sinful, are said to have begged with their dying breath that their coffins might be placed as near as possible to the coffin of the author of the Pilgrim's Progress.

The fame of Bunyan during his life, and during the century which followed his death, was, indeed, great, but was almost entirely confined to religious families of the middle and lower classes. Very seldom was he during that time mentioned with respect by any writer of great literary eminence. Young coupled his prose with the poetry of the wretched D'Urfey. In the Spiritual Quixote, the adventures of Christian are ranked with those of Jack the Giant-killer and John Hickathrift. Cowper ventured to praise the great allegorist, but did not venture to name him. It is a significant circumstance that, till a recent period, all the numerous editions of the Pilgrim's Progress were evidently meant for the cottage and the servants' hall. The paper, the printing, the plates, were all of the meanest description. In general, when the educated minority and the common people differ about the merit of a book, the opinion of the educated minority finally prevails. The Pilgrim's Progress is, perhaps, the only book about which, after the lapse of a hundred years, the educated minority has come over to the opinion of the common people.

The attempts which have been made to improve and to imitate this book are not to be numbered. It has been done into verse ; it has been done into modern English. The Pilgrimage of Tender Conscience, the Pilgrimage of Good Intent, the Pilgrimage of Seek

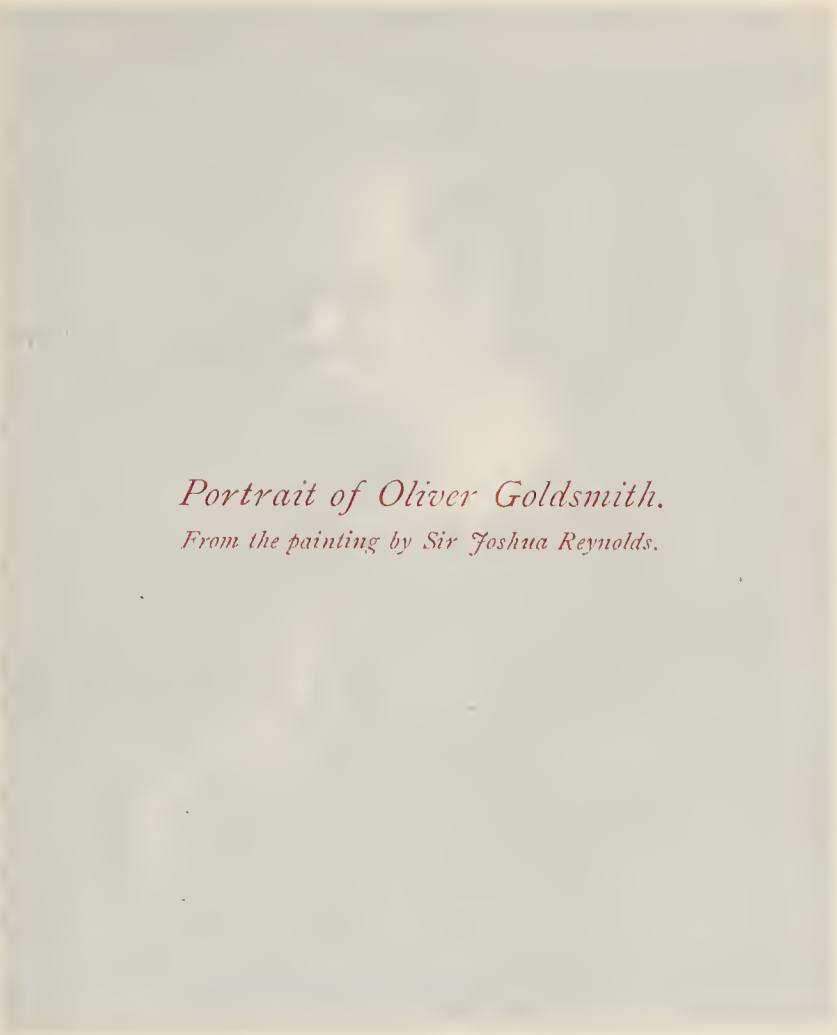
Truth, the Pilgrimage of Theophilus, the Infant Pilgrim, the Hindoo Pilgrim, are among the many feeble copies of the great original. But the peculiar glory of Bunyan is that those who most hated his doctrines have tried to borrow the help of his genius. A Catholic version of his parable may be seen with the head of the Virgin in the title-page. On the other hand, those Antinomians for whom his Calvinism is not strong enough may study the Pilgrimage of Hephzibah, in which nothing will be found which can be construed into an admission of free agency and universal redemption. But the most extraordinary of all the acts of vandalism by which a fine work of art was ever defaced was committed so late as the year 1853. It was determined to transform the Pilgrim's Progress into a Tractarian book. The task was not easy ; for it was necessary to make the two sacraments the most prominent objects in the allegory ; and of all Christian theologians, avowed Quakers excepted, Bunyan was the one in whose system the sacraments held the least prominent place. However, the Wicket Gate became a type of baptism, and the House Beautiful of the eucharist. The effect of this change is such as assuredly the ingenious person who made it never contemplated. For, as not a single pilgrim passes through the Wicket Gate in infancy, and as Faithful hurries past the House Beautiful without stopping, the lesson which the fable in its altered shape teaches is that none but adults ought to be baptized, and that the eucharist may safely be neglected. Nobody would have discovered from the original Pilgrim's Progress that the author was not a Pædobaptist. To turn his book into a book against Pædobaptism was an achievement re-

served for an Anglo-Catholic divine. Such blunders must necessarily be committed by every man who mutilates parts of a great work without taking a comprehensive view of the whole.

OLIVER GOLDSMITH. (February, 1856.)

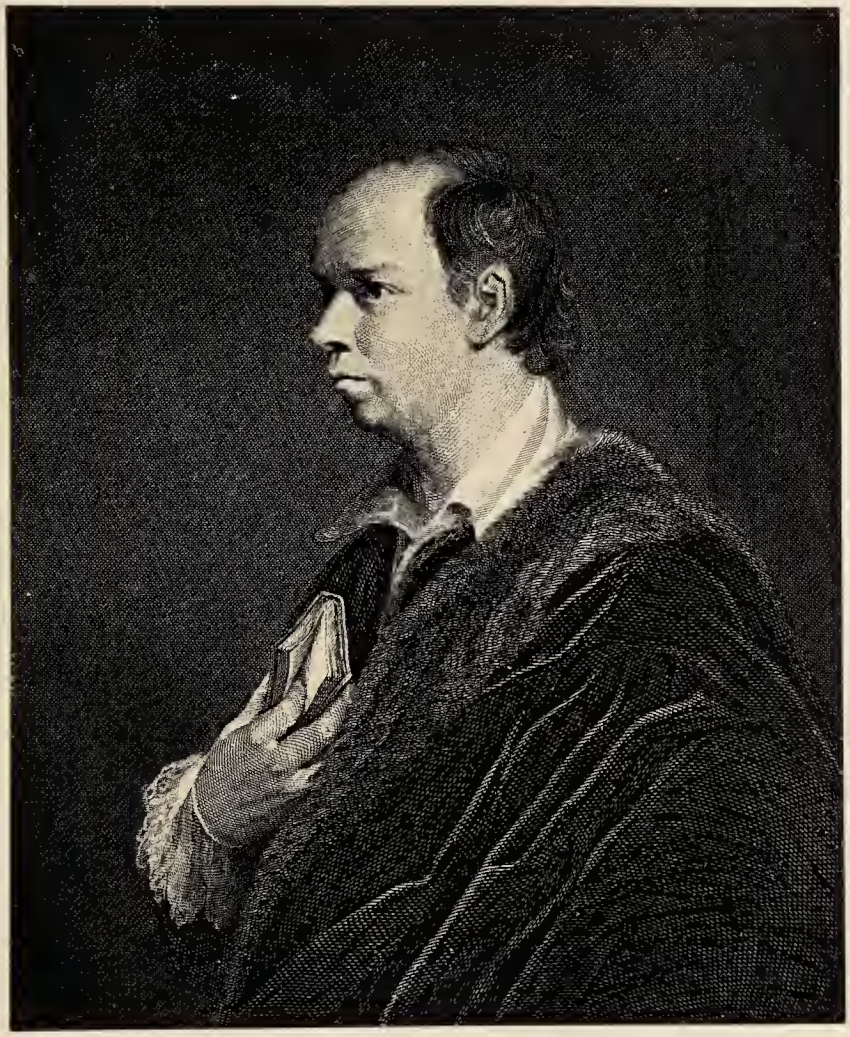
OLIVER GOLDSMITH, one of the most pleasing English writers of the eighteenth century. He was of a Protestant and Saxon family which had been long settled in Ireland, and which had, like most other Protestant and Saxon families, been, in troubled times, harassed and put in fear by the native population. His father, Charles Goldsmith, studied in the reign of Queen Anne at the diocesan school of Elphin, became attached to the daughter of the schoolmaster, married her, took orders, and settled at a place called Pallas, in the County of Longford. There he with difficulty supported his wife and children on what he could earn, partly as a curate and partly as a farmer.

At Pallas Oliver Goldsmith was born in November, 1728. That spot was then, for all practical purposes, almost as remote from the busy and splendid capital in which his later years were passed as any clearing in Upper Canada or any sheep-walk in Australasia now is. Even at this day those enthusiasts who venture to make a pilgrimage to the birthplace of the poet are forced to perform the latter part of their journey on foot. The hamlet lies far from any high-road, on a dreary plain which, in wet weather, is often a lake. The lanes would break any jaunting-car to pieces ; and



Portrait of Oliver Goldsmith.

From the painting by Sir Joshua Reynolds.



there are ruts and sloughs through which the most strongly built wheels cannot be dragged.

While Oliver was still a child, his father was presented to a living worth £200 a year, in the County of Westmeath. The family accordingly quitted their cottage in the wilderness for a spacious house on a frequented road near the village of Lissoy. Here the boy was taught his letters by a maid-servant, and was sent in his seventh year to a village school kept by an old quartermaster on half-pay, who professed to teach nothing but reading, writing, and arithmetic, but who had an inexhaustible fund of stories about ghosts, banshees, and fairies, about the great Rapparee chiefs Baldearg O'Donnell and galloping Hogan, and about the exploits of Peterborough and Stanhope, the surprise of Monjuich, and the glorious disaster of Brihuega. This man must have been of the Protestant religion ; but he was of the aboriginal race, and not only spoke the Irish language, but could pour forth unpremeditated Irish verses. Oliver early became, and through life continued to be, a passionate admirer of the Irish music, and especially of the compositions of Carolan, some of the last notes of whose harp he heard. It ought to be added that Oliver, though by birth one of the Englishry, and though connected by numerous ties with the Established Church, never showed the least sign of that contemptuous antipathy with which, in his days, the ruling minority in Ireland too generally regarded the subject majority. So far, indeed, was he from sharing in the opinions and feelings of the caste to which he belonged that he conceived an aversion to the Glorious and Immortal Memory, and, even when George the Third was on the throne, maintained that

nothing but the restoration of the banished dynasty could save the country.

From the humble academy kept by the old soldier Goldsmith was removed in his ninth year. He went to several grammar-schools, and acquired some knowledge of the ancient languages. His life at this time seems to have been far from happy. He had, as appears from the admirable portrait of him at Knowle, features harsh even to ugliness. The small-pox had set its mark on him with more than usual severity. His stature was small, and his limbs ill put together. Among boys, little tenderness is shown to personal defects; and the ridicule excited by poor Oliver's appearance was heightened by a peculiar simplicity and a disposition to blunder which he retained to the last. He became the common butt of boys and masters, was pointed at as a fright in the playground, and flogged as a dunce in the schoolroom. When he had risen to eminence, those who had once derided him ransacked their memory for the events of his early years, and recited repartees and couplets which had dropped from him, and which, though little noticed at the time, were supposed, a quarter of a century later, to indicate the powers which produced the Vicar of Wakefield and the Deserted Village.

In his seventeenth year Oliver went up to Trinity College, Dublin, as a sizar. The sizars paid nothing for food and tuition, and very little for lodging; but they had to perform some menial service from which they have long been relieved. They swept the court; they carried up the dinner to the fellows' table, and changed the plates and poured out the ale of the rulers of the society. Goldsmith was quartered, not alone, in

a garret, on the window of which his name, scrawled by himself, is still read with interest.[1] From such garrets many men of less parts than his have made their way to the woolsack or to the episcopal bench. But Goldsmith, while he suffered all the humiliations, threw away all the advantages of his situation. He neglected the studies of the place, stood low at the examinations, was turned down to the bottom of his class for playing the buffoon in the lecture-room, was severely reprimanded for pumping on a constable, and was caned by a brutal tutor for giving a ball in the attic story of the college to some gay youths and damsels from the city.

While Oliver was leading at Dublin a divided life between squalid distress and squalid dissipation, his father died, leaving a mere pittance. The youth obtained his bachelor's degree, and left the university. During some time the humble dwelling to which his widowed mother had retired was his home. He was now in his twenty-first year ; it was necessary that he should do something ; and his education seemed to have fitted him to do nothing but to dress himself in gaudy colors, of which he was as fond as a magpie, to take a hand at cards, to sing Irish airs, to play the flute, to angle in summer, and to tell ghost stories by the fire in winter. He tried five or six professions in turn without success. He applied for ordination ; but, as he applied in scarlet clothes, he was speedily turned out of the episcopal palace. He then became tutor in an opulent family,

[1] The glass on which the name is written has, as we are informed by a writer in *Notes and Queries* (2d S., ix., p. 91), been enclosed in a frame and deposited in the Manuscript Room of the College Library, where it is still to be seen.

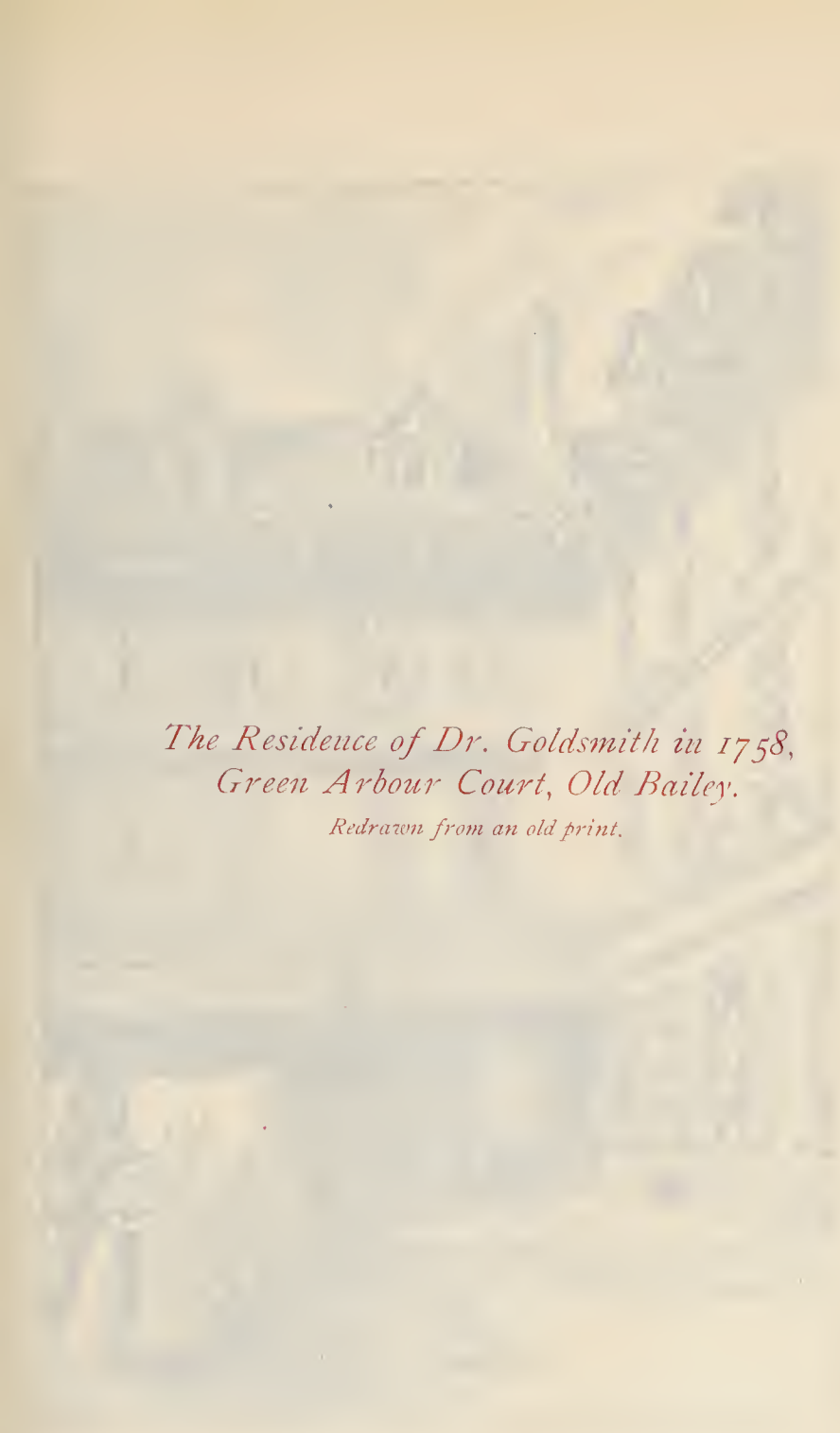
but soon quitted his situation in consequence of a dispute about play. Then he determined to emigrate to America. His relations, with much satisfaction, saw him set out for Cork on a good horse, with thirty pounds in his pocket. But in six weeks he came back on a miserable hack, without a penny, and informed his mother that the ship in which he had taken passage, having got a fair wind while he was at a party of pleasure, had sailed without him. Then he resolved to study the law. A generous kinsman advanced fifty pounds. With this sum Goldsmith went to Dublin, was enticed into a gaming-house, and lost every shilling. He then thought of medicine. A small purse was made up ; and in his twenty-fourth year he was sent to Edinburgh. At Edinburgh he passed eighteen months in nominal attendance on lectures, and picked up some superficial information about chemistry and natural history. Thence he went to Leyden, still pretending to study physic. He left that celebrated university, the third university at which he had resided, in his twenty-seventh year, without a degree, with the merest smattering of medical knowledge, and with no property but his clothes and his flute. His flute, however, proved a useful friend. He rambled on foot through Flanders, France, and Switzerland, playing tunes which everywhere set the peasantry dancing, and which often procured for him a supper and a bed. He wandered as far as Italy. His musical performances, indeed, were not to the taste of the Italians ; but he contrived to live on the alms which he obtained at the gates of convents. It should, however, be observed that the stories which he told about this part of his life ought to be received with great caution ; for strict

veracity was never one of his virtues; and a man who is ordinarily inaccurate in narration is likely to be more than ordinarily inaccurate when he talks about his own travels. Goldsmith, indeed, was so regardless of truth as to assert in print that he was present at a most interesting conversation between Voltaire and Fontenelle, and that this conversation took place at Paris. Now, it is certain that Voltaire never was within a hundred leagues of Paris during the whole time which Goldsmith passed on the Continent.

In 1756 the wanderer landed at Dover, without a shilling, without a friend, and without a calling. He had, indeed, if his own unsupported evidence may be trusted, obtained from the University of Padua a doctor's degree; but this dignity proved utterly useless to him. In England his flute was not in request; there were no convents; and he was forced to have recourse to a series of desperate expedients. He turned strolling player; but his face and figure were ill suited to the boards even of the humblest theatre. He pounded drugs and ran about London with phials for charitable chemists. He joined a swarm of beggars which made its nest in Axe Yard. He was for a time usher of a school, and felt the miseries and humiliations of this situation so keenly that he thought it a promotion to be permitted to earn his bread as a bookseller's hack; but he soon found the new yoke more galling than the old one, and was glad to become an usher again. He obtained a medical appointment in the service of the East India Company; but the appointment was speedily revoked. Why it was revoked we are not told. The subject was one on which he never liked to talk. It is probable that he was incompetent to perform the duties

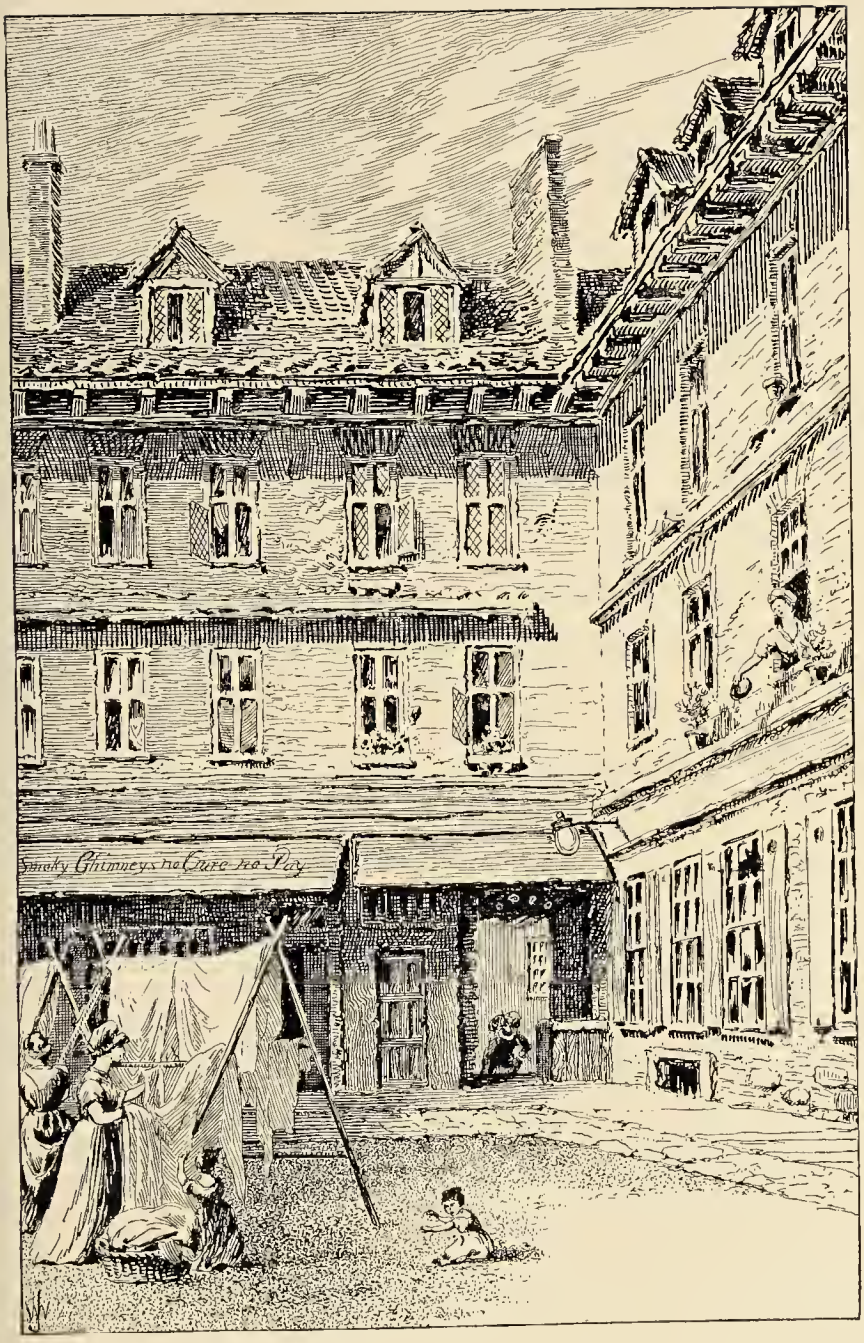
of the place. Then he presented himself at Surgeons' Hall for examination as mate to a naval hospital. Even to so humble a post he was found unequal. By this time the schoolmaster whom he had served for a morsel of food and the third part of a bed was no more. Nothing remained but to return to the lowest drudgery of literature. Goldsmith took a garret in a miserable court, to which he had to climb from the brink of Fleet Ditch by a dizzy ladder of flagstones called Breakneck Steps. The court and the ascent have long disappeared; but old Londoners will remember both. Here, at thirty, the unlucky adventurer sat down to toil like a galley slave.

In the succeeding six years he sent to the press some things which have survived and many which have perished. He produced articles for reviews, magazines, and newspapers ; children's books which, bound in gilt paper and adorned with hideous wood-cuts, appeared in the window of the once far-famed shop at the corner of Saint Paul's Churchyard; An Inquiry into the State of Polite Learning in Europe, which, though of little or no value, is still reprinted among his works ; a Life of Beau Nash, which is not reprinted, though it well deserves to be so ; a superficial and incorrect, but very readable, History of England, in a series of letters purporting to be addressed by a nobleman to his son ; and some very lively and amusing Sketches of London Society, in a series of letters purporting to be addressed by a Chinese traveller to his friends. All these works were anonymous ; but some of them were well known to be Goldsmith's ; and he gradually rose in the estimation of the booksellers for whom he drudged. He was, indeed, emphatically a popular writer. For accu-



The Residence of Dr. Goldsmith in 1758,
Green Arbour Court, Old Bailey.

Redrawn from an old print.


Smoky Chimneys no Cure no Pay

rate research or grave disquisition he was not well qualified by nature or by education. He knew nothing accurately : his reading had been desultory ; nor had he meditated deeply on what he had read. He had seen much of the world ; but he had noticed and retained little more of what he had seen than some grotesque incidents and characters which had happened to strike his fancy. But, though his mind was very scantily stored with materials, he used what materials he had in such a way as to produce a wonderful effect. There have been many greater writers ; but, perhaps, no writer was ever more uniformly agreeable. His style was always pure and easy, and, on proper occasions, pointed and energetic. His narratives were always amusing, his descriptions always picturesque, his humor rich and joyous, yet not without an occasional tinge of amiable sadness. About everything that he wrote, serious or sportive, there was a certain natural grace and decorum hardly to be expected from a man a great part of whose life had been passed among thieves and beggars, street-walkers and merry-andrews, in those squalid dens which are the reproach of great capitals.

As his name gradually became known, the circle of his acquaintance widened. He was introduced to Johnson, who was then considered as the first of living English writers ; to Reynolds, the first of English painters ; and to Burke, who had not yet entered Parliament, but who had distinguished himself greatly by his writings and by the eloquence of his conversation. With these eminent men Goldsmith became intimate. In 1763 he was one of the nine original members of that celebrated fraternity which has sometimes been

called the Literary Club, but which has always disclaimed that epithet, and still glories in the simple name of The Club.

By this time Goldsmith had quitted his miserable dwelling at the top of Breakneck Steps, and had taken chambers in the more civilized region of the Inns of Court. But he was still often reduced to pitiable shifts. Towards the close of 1764, his rent was so long in arrear that his landlady one morning called in the help of a sheriff's officer. The debtor, in great perplexity, despatched a messenger to Johnson ; and Johnson, always friendly, though often surly, sent back the messenger with a guinea, and promised to follow speedily. He came, and found that Goldsmith had changed the guinea, and was railing at the landlady over a bottle of Madeira. Johnson put the cork into the bottle, and entreated his friend to consider calmly how money was to be procured. Goldsmith said that he had a novel for the press. Johnson glanced at the manuscript, saw that there were good things in it, took it to a bookseller, sold it for £60, and soon returned with the money. The rent was paid ; and the sheriff's officer withdrew. According to one story, Goldsmith gave his landlady a sharp reprimand for her treatment of him ; according to another, he insisted on her joining him in a bowl of punch. Both stories are probably true. The novel which was thus ushered into the world was the Vicar of Wakefield.

But, before the Vicar of Wakefield appeared in print, came the great crisis of Goldsmith's literary life. In Christmas week, 1764, he published a poem entitled the Traveller. It was the first work to which he had put his name ; and it at once raised him to the rank of

a legitimate English classic. The opinion of the most skilful critics was that nothing finer had appeared in verse since the fourth book of the Dunciad. In one respect the Traveller differs from all Goldsmith's other writings. In general, his designs were bad and his execution good. In the Traveller, the execution, though deserving of much praise, is far inferior to the design. No philosophical poem, ancient or modern, has a plan so noble, and at the same time so simple. An English wanderer, seated on a crag among the Alps, near the point where three great countries meet, looks down on the boundless prospect, reviews his long pilgrimage, recalls the varieties of scenery, of climate, of government, of religion, of national character, which he has observed, and comes to the conclusion, just or unjust, that our happiness depends little on political institutions, and much on the temper and regulation of our own minds.

While the fourth edition of the Traveller was on the counters of the booksellers, the Vicar of Wakefield appeared, and rapidly obtained a popularity which has lasted down to our own time, and which is likely to last as long as our language. The fable is, indeed, one of the worst that ever were constructed. It wants, not merely that probability which ought to be found in a tale of common English life, but that consistency which ought to be found even in the wildest fiction about witches, giants, and fairies. But the earlier chapters have all the sweetness of pastoral poetry, together with the vivacity of comedy. Moses and his spectacles, the vicar and his monogamy, the sharper and his cosmogony, the squire proving from Aristotle that relatives are related, Olivia preparing herself for the

arduous task of converting a rakish lover by studying the controversy between Robinson Crusoe and Friday, the great ladies with their scandal about Sir Tomkyn's amours and Dr. Burdock's verses, and Mr. Burchell with his "Fudge," have caused as much harmless mirth as has ever been caused by matter packed into so small a number of pages. The latter part of the tale is unworthy of the beginning. As we approach the catastrophe, the absurdities lie thicker and thicker, and the gleams of pleasantry become rarer and rarer.

The success which had attended Goldsmith as a novelist emboldened him to try his fortune as a dramatist. He wrote the Good-natured Man, a piece which had a worse fate than it deserved. Garrick refused to produce it at Drury Lane. It was acted at Covent Garden in 1768, but was coldly received. The author, however, cleared by his benefit nights, and by the sale of the copyright, no less than £500, five times as much as he had made by the Traveller and the Vicar of Wakefield together. The plot of the Good-natured Man is, like almost all Goldsmith's plots, very ill constructed. But some passages are exquisitely ludicrous; much more ludicrous, indeed, than suited the taste of the town at that time. A canting, mawkish play, entitled False Delicacy, had just had an immense run. Sentimentality was all the mode. During some years, more tears were shed at comedies than at tragedies; and a pleasantry which moved the audience to anything more than a grave smile was reprobated as low. It is not strange, therefore, that the very best scene in the Good-natured Man—that in which Miss Richland finds her lover attended by the bailiff and the bailiff's follower in full court-dresses—should have been merci-

lessly hissed, and should have been omitted after the first night.

In 1770 appeared the Deserted Village. In mere diction and versification, this celebrated poem is fully equal, perhaps superior, to the Traveller; and it is generally preferred to the Traveller by that large class of readers who think, with Bayes in the Rehearsal, that the only use of a plan is to bring in fine things. More discerning judges, however, while they admire the beauty of the details, are shocked by one unpardonable fault which pervades the whole. The fault we mean is not that theory about wealth and luxury which has so often been censured by political economists. The theory is, indeed, false; but the poem, considered merely as a poem, is not necessarily the worse on that account. The finest poem in the Latin language, indeed the finest didactic poem in any language, was written in defence of the silliest and meanest of all systems of natural and moral philosophy. A poet may easily be pardoned for reasoning ill; but he cannot be pardoned for describing ill, for observing the world in which he lives so carelessly that his portraits bear no resemblance to the originals, for exhibiting, as copies from real life, monstrous combinations of things which never were, and never could be, found together. What would be thought of a painter who should mix August and January in one landscape, who should introduce a frozen river into a harvest scene? Would it be a sufficient defence of such a picture to say that every part was exquisitely colored; that the green hedges, the apple-trees loaded with fruit, the wagons reeling under the yellow sheaves, and the sunburnt reapers wiping their foreheads were very fine, and that

the ice and the boys sliding were also very fine? To such a picture the Deserted Village bears a great resemblance. It is made up of incongruous parts. The village in its happy days is a true English village. The village in its decay is an Irish village. The felicity and the misery which Goldsmith has brought close together belong to two different countries, and to two different stages in the progress of society. He had assuredly never seen in his native island such a rural paradise, such a seat of plenty, content, and tranquillity, as his Auburn. He had assuredly never seen in England all the inhabitants of such a paradise turned out of their homes in one day, and forced to emigrate in a body to America. The hamlet he had probably seen in Kent; the ejectment he had probably seen in Munster; but, by joining the two, he has produced something which never was, and never will be, seen in any part of the world.

In 1773 Goldsmith tried his chance at Covent Garden with a second play, She Stoops to Conquer. The manager was not without great difficulty induced to bring this piece out. The sentimental comedy still reigned; and Goldsmith's comedies were not sentimental. The Good-natured Man had been too funny to succeed; yet the mirth of the Good-natured Man was sober when compared with the rich drollery of She Stoops to Conquer, which is, in truth, an incomparable farce in five acts. On this occasion, however, genius triumphed. Pit, boxes, and galleries were in a constant roar of laughter. If any bigoted admirer of Kelly and Cumberland ventured to hiss or groan, he was speedily silenced by a general cry of "Turn him out," or "Throw him over." Two generations have since

confirmed the verdict which was pronounced on that night.

While Goldsmith was writing the Deserted Village and She Stoops to Conquer, he was employed on works of a very different kind—works from which he derived little reputation, but much profit. He compiled for the use of schools a History of Rome, by which he made £300 ; a History of England, by which he made £600 ; a History of Greece, for which he received £250 ; a Natural History, for which the booksellers covenanted to pay him 800 guineas. These works he produced without any elaborate research, by merely selecting, abridging, and translating into his own clear, pure, and flowing language what he found in books well known to the world, but too bulky or too dry for boys and girls. He committed some strange blunders ; for he knew nothing with accuracy. Thus, in his History of England, he tells us that Naseby is in Yorkshire ; nor did he correct this mistake when the book was reprinted. He was very nearly hoaxed into putting into the History of Greece an account of a battle between Alexander the Great and Montezuma. In his Animated Nature, he relates, with faith and with perfect gravity, all the most absurd lies which he could find in books of travels about gigantic Patagonians, monkeys that preach sermons, nightingales that repeat long conversations. "If he can tell a horse from a cow," said Johnson, "that is the extent of his knowledge of zoology." How little Goldsmith was qualified to write about the physical sciences is sufficiently proved by two anecdotes. He, on one occasion, denied that the sun is longer in the northern than in the southern signs. It was vain to cite the authority of

Maupertuis. "Maupertuis!" he cried; "I understand those matters better than Maupertuis." On another occasion, he, in defiance of the evidence of his own senses, maintained obstinately, and even angrily, that he chewed his dinner by moving his upper jaw.

Yet, ignorant as Goldsmith was, few writers have done more to make the first steps in the laborious road to knowledge easy and pleasant. His compilations are widely distinguished from the compilations of ordinary bookmakers. He was a great, perhaps an unequalled, master of the arts of selection and condensation. In these respects, his histories of Rome and England, and still more his own abridgments of these histories, well deserve to be studied. In general, nothing is less attractive than an epitome: but the epitomes of Goldsmith, even when most concise, are always amusing; and to read them is considered by intelligent children, not as a task, but as a pleasure.

Goldsmith might now be considered as a prosperous man. He had the means of living in comfort, and even in what to one who had so often slept in barns and on bulks must have been luxury. His fame was great and was constantly rising. He lived in what was intellectually far the best society of the kingdom—in a society in which no talent or accomplishment was wanting, and in which the art of conversation was cultivated with splendid success. There probably were never four talkers more admirable in four different ways than Johnson, Burke, Beauclerk, and Garrick; and Goldsmith was on terms of intimacy with all the four. He aspired to share in their colloquial renown; but never was ambition more unfortunate. It may seem strange that a man who wrote with so much perspicu-

ity, vivacity, and grace should have been, whenever he took part in a conversation, an empty, noisy, blundering rattle. But on this point the evidence is overwhelming. So extraordinary was the contrast between Goldsmith's published works and the silly things which he said that Horace Walpole described him as an inspired idiot. "Noll," said Garrick, "wrote like an angel, and talked like poor Pol." Chamier declared that it was a hard exercise of faith to believe that so foolish a chatterer could have really written the Traveller. Even Boswell could say, with contemptuous compassion, that he liked very well to hear honest Goldsmith run on. "Yes, sir," said Johnson; "but he should not like to hear himself." Minds differ as rivers differ. There are transparent and sparkling rivers, from which it is delightful to drink as they flow; to such rivers, the minds of such men as Burke and Johnson may be compared. But there are rivers of which the water, when first drawn, are turbid and noisome, but becomes pellucid as crystal, and delicious to the taste, if it be suffered to stand till it has deposited a sediment; and such a river is a type of the mind of Goldsmith. His first thoughts on every subject were confused, even to absurdity; but they required only a little time to work themselves clear. When he wrote, they had that time; and therefore his readers pronounced him a man of genius: but when he talked, he talked nonsense, and made himself the laughing-stock of his hearers. He was painfully sensible of his inferiority in conversation; he felt every failure keenly; yet he had not sufficient judgment and self-command to hold his tongue. His animal spirits and vanity were always impelling him to try to do the one thing which he could not do. After

every attempt, he felt that he had exposed himself and writhed with shame and vexation ; yet the next moment he began again.

His associates seem to have regarded him with kindness, which, in spite of their admiration of his writings, was not unmixed with contempt. In truth, there was in his character much to love, but very little to respect. His heart was soft, even to weakness : he was so generous that he quite forgot to be just ; he forgave injuries so readily that he might be said to invite them ; and was so liberal to beggars that he had nothing left for his tailor and his butcher. He was vain, sensual, frivolous, profuse, improvident. One vice of a darker shade was imputed to him, envy. But there is not the least reason to believe that this bad passion, though it sometimes made him wince and utter fretful exclamations, ever impelled him to injure, by wicked arts; the reputation of any of his rivals. The truth probably is, that he was not more envious, but merely less prudent, than his neighbors. His heart was on his lips. All those small jealousies which are but too common among men of letters, but which a man of letters who is also a man of the world does his best to conceal, Goldsmith avowed with the simplicity of a child. When he was envious, instead of affecting indifference, instead of damning with faint praise, instead of doing injuries slyly and in the dark, he told everybody that he was envious. "Do not, pray, do not talk of Johnson in such terms," he said to Boswell ; "you harrow up my very soul." George Steevens and Cumberland were men far too cunning to say such a thing. They would have echoed the praises of the man whom they envied, and then have sent to the newspapers anonymous

libels upon him. Both what was good and what was bad in Goldsmith's character was to his associates a perfect security that he would never commit such villany. He was neither ill-natured enough nor long-headed enough to be guilty of any malicious act which required contrivance and disguise.

Goldsmith has sometimes been represented as a man of genius, cruelly treated by the world, and doomed to struggle with difficulties which at last broke his heart. But no representation can be more remote from the truth. He did, indeed, go through much sharp misery before he had done anything considerable in literature. But, after his name had appeared on the title-page of the Traveller, he had none but himself to blame for his distresses. His average income during the last seven years of his life certainly exceeded £400 a year ; and £400 a year ranked, among the incomes of that day, at least as high as £800 a year would rank at present. A single man living in the Temple with £400 a year might then be called opulent. Not one in ten of the young gentlemen of good families who were studying the law there had so much. But all the wealth which Lord Clive had brought from Bengal and Sir Lawrence Dundas from Germany, joined together, would not have sufficed for Goldsmith. He spent twice as much as he had. He wore fine clothes, gave dinners of several courses, paid court to venal beauties. He had also, it should be remembered, to the honor of his heart, though not of his head, a guinea, or five, or ten, according to the state of his purse, ready for any tale of distress, true or false. But it was not in dress or feasting, in promiscuous amours or promiscuous charities, that his chief expense lay. He had been from boyhood

a gambler, and at once the most sanguine and the most unskilful of gamblers. For a time he put off the day of inevitable ruin by temporary expedients. He obtained advances from booksellers by promising to execute works which he never began. But at length this source of supply failed. He owed more than £2000; and he saw no hope of extrication from his embarrassments. His spirits and health gave way. He was attacked by a nervous fever, which he thought himself competent to treat. It would have been happy for him if his medical skill had been appreciated as justly by himself as by others. Notwithstanding the degree which he pretended to have received at Padua, he could procure no patients. "I do not practise," he once said; "I make it a rule to prescribe only for my friends."—"Pray, dear Doctor," said Beauclerk, "alter your rule, and prescribe only for your enemies." Goldsmith now, in spite of this excellent advice, prescribed for himself. The remedy aggravated the malady. The sick man was induced to call in real physicians; and they at one time imagined that they had cured the disease. Still his weakness and restlessness continued. He could get no sleep. He could take no food. "You are worse," said one of his medical attendants, "than you should be from the degree of fever which you have. Is your mind at ease?"—"No, it is not," were the last recorded words of Oliver Goldsmith. He died on the third of April, 1774, in his forty-sixth year. He was laid in the churchyard of the Temple; but the spot was not marked by any inscription, and is now forgotten. The coffin was followed by Burke and Reynolds. Both these great men were sincere mourners. Burke, when he heard of

Goldsmith's death, had burst into a flood of tears. Reynolds had been so much moved by the news that he flung aside his brush and palette for the day.

A short time after Goldsmith's death, a little poem appeared which will, as long as our language lasts, associate the name of his two illustrious friends with his own. It has already been mentioned that he sometimes felt keenly the sarcasm which his wild, blundering talk brought upon him. He was, not long before his last illness, provoked into retaliating. He wisely betook himself to his pen; and at that weapon he proved himself a match for all his assailants together. Within a small compass he drew, with a singularly easy and vigorous pencil, the characters of nine or ten of his intimate associates. Though this little work did not receive his last touches, it must always be regarded as a masterpiece. It is impossible, however, not to wish that four or five likenesses, which have no interest for posterity, were wanting to that noble gallery, and that their places were supplied by sketches of Johnson and Gibbon as happy and vivid as the sketches of Burke and Garrick.

Some of Goldsmith's friends and admirers honored him with a cenotaph in Westminster Abbey. Nollekens was the sculptor; and Johnson wrote the inscription. It is much to be lamented that Johnson did not leave to posterity a more durable and a more valuable memorial of his friend. A life of Goldsmith would have been an inestimable addition to the Lives of the Poets. No man appreciated Goldsmith's writings more justly than Johnson; no man was better acquainted with Goldsmith's character and habits; and no man was more competent to delineate, with truth and spirit,

the peculiarities of a mind in which great powers were found in company with great weaknesses. But the list of poets to whose works Johnson was requested by the booksellers to furnish prefaces ended with Lyttelton, who died in 1773. The line seems to have been drawn expressly for the purpose of excluding the person whose portrait would have most fitly closed the series. Goldsmith, however, has been fortunate in his biographers. Within a few years his life has been written by Mr. Prior, by Mr. Washington Irving, and by Mr. Foster. The diligence of Mr. Prior deserves great praise ; the style of Mr. Washington Irving is always pleasing ; but the highest place must, in justice, be assigned to the eminently interesting work of Mr. Foster.

SAMUEL JOHNSON. (December, 1856.)

SAMUEL JOHNSON, one of the most eminent English writers of the eighteenth century, was the son of Michael Johnson, who was, at the beginning of that century, a magistrate of Lichfield, and a bookseller of great note in the Midland Counties. Michael's abilities and attainments seem to have been considerable. He was so well acquainted with the contents of the volumes which he exposed to sale that the country rectors of Staffordshire and Worcestershire thought him an oracle on points of learning. Between him and the clergy, indeed, there was a strong religious and political sympathy. He was a zealous churchman, and, though he had qualified himself for municipal office by taking the oaths to the sovereigns in possession, was to the last a Jacobite in heart. At his house —a house which is still pointed out to every traveller who visits Lichfield—Samuel was born on the eighteenth of September, 1709. In the child, the physical, intellectual, and moral peculiarities which afterwards distinguished the man were plainly discernible ; great muscular strength, accompanied by much awkwardness and many infirmities ; great quickness of parts, with a morbid propensity to sloth and procrastination ; a kind and generous heart, with a gloomy and irritable

temper. He had inherited from his ancestors a scrofulous taint, which it was beyond the power of medicine to remove. His parents were weak enough to believe that the royal touch was a specific for this malady. In his third year he was taken up to London, inspected by the court surgeon, prayed over by the court chaplains, and stroked and presented with a piece of gold by Queen Anne. One of his earliest recollections was that of a stately lady in a diamond stomacher and a long black hood. Her hand was applied in vain. The boy's features, which were originally noble and not irregular, were distorted by his malady. His cheeks were deeply scarred. He lost, for a time, the sight of one eye ; and he saw but very imperfectly with the other. But the force of his mind overcame every impediment. Indolent as he was, he acquired knowledge with such ease and rapidity that at every school to which he was sent he was soon the best scholar. From sixteen to eighteen he resided at home, and was left to his own devices. He learned much at this time, though his studies were without guidance and without plan. He ransacked his father's shelves, dipped into a multitude of books, read what was interesting, and passed over what was dull. An ordinary lad would have acquired little or no useful knowledge in such a way; but much that was dull to ordinary lads was interesting to Samuel. He read little Greek ; for his proficiency in that language was not such that he could take much pleasure in the masters of Attic poetry and eloquence. But he had left school a good Latinist ; and he soon acquired, in the large and miscellaneous library of which he now had the command, an extensive knowledge of Latin literature. That Augustan delicacy of taste which is

House in which Dr. Johnson was born.

Redrawn from an old print.

the boast of the great public schools of England he never possessed. But he was early familiar with some classical writers who were quite unknown to the best scholars in the sixth form at Eton. He was peculiarly attracted by the works of the great restorers of learning. Once, while searching for some apples, he found a huge folio volume of Petrarch's works. The name excited his curiosity; and he eagerly devoured hundreds of pages. Indeed, the diction and versification of his own Latin compositions show that he had paid at least as much attention to modern copies from the antique as to the original models.

While he was thus irregularly educating himself, his family was sinking into hopeless poverty. Old Michael Johnson was much better qualified to pore upon books and to talk about them than to trade in them. His business declined; his debts increased; it was with difficulty that the daily expenses of his household were defrayed. It was out of his power to support his son at either university; but a wealthy neighbor offered assistance; and, in reliance on promises which proved to be of very little value, Samuel was entered at Pembroke College, Oxford. When the young scholar presented himself to the rulers of that society, they were amazed not more by his ungainly figure and eccentric manners than by the quantity of extensive and curious information which he had picked up during many months of desultory but not unprofitable study. On the first day of his residence, he surprised his teachers by quoting Macrobius; and one of the most learned among them declared that he had never known a freshman of equal attainments.

At Oxford Johnson resided during about three years.

He was poor, even to raggedness ; and his appearance excited a mirth and a pity which were equally intolerable to his haughty spirit. He was driven from the quadrangle of Christ Church by the sneering looks which the members of that aristocratical society cast at the holes in his shoes. Some charitable person placed a new pair at his door ; but he spurned them away in a fury. Distress made him, not servile, but reckless and ungovernable. No opulent gentleman commoner, panting for one-and-twenty, could have treated the academical authorities with more gross disrespect. The needy scholar was generally to be seen under the gate of Pembroke, a gate now adorned with his effigy, haranguing a circle of lads, over whom, in spite of his tattered gown and dirty linen, his wit and audacity gave him an undisputed ascendency. In every mutiny against the discipline of the college he was the ringleader. Much was pardoned, however, to a youth so highly distinguished by abilities and acquirements. He had early made himself known by turning Pope's Messiah into Latin verse. The style and rhythm, indeed, were not exactly Virgilian ; but the translation found many admirers, and was read with pleasure by Pope himself.

The time drew near at which Johnson would, in the ordinary course of things, have become a Bachelor of Arts ; but he was at the end of his resources. Those promises of support on which he had relied had not been kept. His family could do nothing for him. His debts to Oxford tradesmen were small, indeed, yet larger than he could pay. In the autumn of 1731, he was under the necessity of quitting the university without a degree. In the following winter his father

died. The old man left but a pittance ; and of that pittance almost the whole was appropriated to the support of his widow. The property to which Samuel succeeded amounted to no more than twenty pounds.

His life during the thirty years which followed was one of hard struggle with poverty. The misery of that struggle needed no aggravation, but was aggravated by the sufferings of an unsound body and an unsound mind. Before the young man left the university, his hereditary malady had broken forth in a singularly cruel form. He had become an incurable hypochondriac. He said long after that he had been mad all his life, or at least not perfectly sane ; and, in truth, eccentricities less strange than his have often been thought grounds sufficient for absolving felons and for setting aside wills. His grimaces, his gestures, his mutterings, sometimes diverted and sometimes terrified people who did not know him. At a dinner-table he would, in a fit of absence, stoop down and twitch off a lady's shoe. He would amaze a drawing-room by suddenly ejaculating a clause of the Lord's Prayer. He would conceive an unintelligible aversion to a particular alley, and perform a great circuit rather than see the hateful place. He would set his heart on touching every post in the streets through which he walked. If by any chance he missed a post, he would go back a hundred yards and repair the omission. Under the influence of his disease, his senses became morbidly torpid, and his imagination morbidly active. At one time he would stand poring on the town clock without being able to tell the hour. At another he would distinctly hear his mother, who was many miles off, calling him by his name. But this was not the worst. A deep

melancholy took possession of him, and gave a dark tinge to all his views of human nature and of human destiny. Such wretchedness as he endured has driven many men to shoot themselves or drown themselves. But he was under no temptation to commit suicide. He was sick of life, but he was afraid of death ; and he shuddered at every sight or sound which reminded him of the inevitable hour. In religion he found but little comfort during his long and frequent fits of dejection ; for his religion partook of his own character. The light from heaven shone on him, indeed, but not in a direct line, or with its own pure splendor. The rays had to struggle through a disturbing medium ; they reached him refracted, dulled, and discolored by the thick gloom which had settled on his soul ; and, though they might be sufficiently clear to guide him, were too dim to cheer him.

With such infirmities of body and of mind, this celebrated man was left, at two-and-twenty, to fight his way through the world. He remained during about five years in the Midland Counties. At Lichfield, his birthplace and his early home, he had inherited some friends and acquired others. He was kindly noticed by Henry Hervey, a gay officer of noble family, who happened to be quartered there. Gilbert Walmesley, registrar of the ecclesiastical court of the diocese, a man of distinguished parts, learning, and knowledge of the world, did himself honor by patronizing the young adventurer, whose repulsive person, unpolished manners, and squalid garb moved many of the petty aristocracy of the neighborhood to laughter or to disgust. At Lichfield, however, Johnson could find no way of earning a livelihood. He became usher of a

grammar-school in Leicestershire ; he resided as an humble companion in the house of a country gentleman ; but a life of dependence was insupportable to his haughty spirit. He repaired to Birmingham, and there earned a few guineas by literary drudgery. In that town he printed a translation, little noticed at that time, and long forgotten, of a Latin book about Abyssinia. He then put forth proposals for publishing, by subscription, the poems of Politian, with notes containing a history of modern Latin verse ; but subscriptions did not come in, and the volume never appeared.

While leading this vagrant and miserable life, Johnson fell in love. The object of his passion was Mrs. Elizabeth Porter, a widow who had children as old as himself. To ordinary spectators, the lady appeared to be a short, fat, coarse woman, painted half an inch thick, dressed in gaudy colors, and fond of exhibiting provincial airs and graces which were not exactly those of the Queensberrys and Lepels. To Johnson, however, whose passions were strong, whose eyesight was too weak to distinguish ceruse from natural bloom, and who had seldom or never been in the same room with a woman of real fashion, his Titty, as he called her, was the most beautiful, graceful, and accomplished of her sex. That his admiration was unfeigned cannot be doubted ; for she was as poor as himself. She accepted, with a readiness which did her little honor, the addresses of a suitor who might have been her son. The marriage, however, in spite of occasional wranglings, proved happier than might have been expected. The lover continued to be under the illusions of the wedding-day till the lady died in her sixty-fourth year. On her monument he placed an inscription extolling

the charms of her person and of her manners; and when, long after her decease, he had occasion to mention her, he exclaimed, with a tenderness half ludicrous, half pathetic, "Pretty creature!"

His marriage made it necessary for him to exert himself more strenuously than he had hitherto done. He took a house in the neighborhood of his native town, and advertised for pupils. But eighteen months passed away; and only three pupils came to his academy. Indeed, his appearance was so strange and his temper so violent that his schoolroom must have resembled an ogre's den. Nor was the tawdry, painted grandmother whom he called his Titty well qualified to make provision for the comfort of young gentlemen. David Garrick, who was one of the pupils, used, many years later, to throw the best company of London into convulsions of laughter by mimicking the endearments of this extraordinary pair.

At length Johnson, in the twenty-eighth year of his age, determined to seek his fortune in the capital as a literary adventurer. He set out with a few guineas, three acts of the tragedy of Irene in manuscript, and two or three letters of introduction from his friend Walmesley.

Never, since literature became a calling in England, had it been a less gainful calling than at the time when Johnson took up his residence in London. In the preceding generation, a writer of eminent merit was sure to be munificently rewarded by the government. The least that he could expect was a pension or a sinecure place; and if he showed any aptitude for politics, he might hope to be a member of Parliament, a lord of the treasury, an ambassador, a secretary of state. It would

be easy, on the other hand, to name several writers of the nineteenth century of whom the least successful has received forty thousand pounds from the booksellers. But Johnson entered on his vocation in the most dreary part of the dreary interval which separated two ages of prosperity. Literature had ceased to flourish under the patronage of the great, and had not begun to flourish under the patronage of the public. One man of letters, indeed, Pope, had acquired by his pen what was then considered as a handsome fortune, and lived on a footing of equality with nobles and ministers of state. But this was a solitary exception. Even an author whose reputation was established, and whose works were popular—such an author as Thomson, whose Seasons were in every library ; such an author as Fielding, whose Pasquin had had a greater run than any drama since the Beggar's Opera—was sometimes glad to obtain, by pawning his best coat, the means of dining on tripe at a cookshop underground, where he could wipe his hands, after his greasy meal, on the back of a Newfoundland dog. It is easy, therefore, to imagine what humiliations and privations must have awaited the novice who had still to earn a name. One of the publishers to whom Johnson applied for employment measured, with a scornful eye, that athletic though uncouth frame, and exclaimed, " You had better get a porter's knot, and carry trunks." Nor was the advice bad ; for a porter was likely as plentifully fed and as comfortably lodged as a poet.

Some time appears to have elapsed before Johnson was able to form any literary connection from which he could expect more than bread for the day which was passing over him. He never forgot the generosity with

which Hervey, who was now residing in London, relieved his wants during this time of trial. "Harry Hervey," said the old philosopher, many years later, "was a vicious man; but he was very kind to me. If you call a dog Hervey, I shall love him." At Hervey's table Johnson sometimes enjoyed feasts which were made more agreeable by contrast. But, in general, he dined, and thought that he dined well, on sixpennyworth of meat and a pennyworth of bread at an alehouse near Drury Lane.

The effect of the privations and sufferings which he endured at this time was discernible to the last in his temper and his deportment. His manners had never been courtly. They now became almost savage. Being frequently under the necessity of wearing shabby coats and dirty shirts, he became a confirmed sloven. Being often very hungry when he sat down to his meals, he contracted a habit of eating with ravenous greediness. Even to the end of his life, and even at the tables of the great, the sight of food affected him as it affects wild beasts and birds of prey. His taste in cookery, formed in subterranean ordinaries and alamode-beef shops, was far from delicate. Whenever he was so fortunate as to have near him a hare that had been kept too long, or a meat pie made of rancid butter, he gorged himself with such violence that his veins swelled and the moisture broke out on his forehead. The affronts which his poverty emboldened stupid and low-minded men to offer to him would have broken a mean spirit into sycophancy, but made him rude even to ferocity. Unhappily, the insolence which, while it was defensive, was pardonable, and in some sense respectable, accompanied him into societies where he was

treated with courtesy and kindness. He was repeatedly provoked into striking those who had taken liberties with him. All the sufferers, however, were wise enough to abstain from talking about their beatings, except Osborne, the most rapacious and brutal of booksellers, who proclaimed everywhere that he had been knocked down by the huge fellow whom he had hired to puff the Harleian Library.

About a year after Johnson had begun to reside in London, he was fortunate enough to obtain regular employment from Cave, an enterprising and intelligent bookseller, who was proprietor and editor of the Gentleman's Magazine. That journal, just entering on the ninth year of its long existence, was the only periodical work in the kingdom which then had what would now be called a large circulation. It was, indeed, the chief source of parliamentary intelligence. It was not then safe, even during a recess, to publish an account of the proceedings of either House without some disguise. Cave, however, ventured to entertain his readers with what he called "Reports of the Debates of the Senate of Lilliput." France was Blefuscu; London was Mildendo; pounds were sprugs; the Duke of Newcastle was the Nardac Secretary of State; Lord Hardwicke was Hurgo Hickrad; and William Pulteney was Wingul Pulnub. To write the speeches was, during several years, the business of Johnson. He was generally furnished with notes, meagre indeed, and inaccurate, of what had been said; but sometimes he had to find arguments and eloquence, both for the Ministry and for the Opposition. He was himself a Tory, not from rational conviction—for his serious opinion was that one form of government was just as good or as bad as another—

but from mere passion, such as inflamed the Capulets against the Montagues, or the Blues of the Roman circus against the Greens. In his infancy he had heard so much talk about the villanies of the Whigs and the dangers of the Church that he had become a furious partisan when he could scarcely speak. Before he was three he had insisted on being taken to hear Sacheverell preach at Lichfield Cathedral, and had listened to the sermon with as much respect and probably with as much intelligence, as any Staffordshire squire in the congregation. The work which had been begun in the nursery had been completed by the university. Oxford, when Johnson resided there, was the most Jacobitical place in England ; and Pembroke was one of the most Jacobitical colleges in Oxford. The prejudices which he brought up to London were scarcely less absurd than those of his own Tom Tempest. Charles the Second and James the Second were two of the best kings that ever reigned. Laud, a poor creature who never did, said, or wrote anything indicating more than the ordinary capacity of an old woman, was a prodigy of parts and learning over whose tomb Art and Genius still continued to weep. Hampden deserved no more honorable name than that of " the zealot of rebellion." Even the ship-money, condemned not less decidedly by Falkland and Clarendon than by the bitterest Roundheads, Johnson would not pronounce to have been an unconstitutional impost. Under a government the mildest that had ever been known in the world—under a government which allowed to the people an unprecedented liberty of speech and action, he fancied that he was a slave ; he assailed the ministry with obloquy which refuted itself, and regretted the lost freedom and

happiness of those golden days in which a writer who had taken but one-tenth part of the license allowed to him would have been pilloried, mangled with the shears, whipped at the cart's tail, and flung into a noisome dungeon to die. He hated Dissenters and stock-jobbers, the excise and the army, septennial parliaments and Continental connections. He long had an aversion to the Scotch—an aversion of which he could not remember the commencement, but which, he owned, had probably originated in his abhorrence of the conduct of the nation during the Great Rebellion. It is easy to guess in what manner debates on great party questions were likely to be reported by a man whose judgment was so much disordered by party spirit. A show of fairness was indeed necessary to the prosperity of the Magazine. But Johnson long afterwards owned that, though he had saved appearances, he had taken care that the Whig dogs should not have the best of it ; and, in fact, every passage which has lived, every passage which bears the marks of his higher faculties, is put into the mouth of some member of the Opposition.

A few weeks after Johnson had entered on these obscure labors, he published a work which at once placed him high among the writers of his age. It is probable that what he had suffered during his first year in London had often reminded him of some parts of that noble poem in which Juvenal had described the misery and degradation of a needy man of letters, lodged among the pigeons' nests in the tottering garrets which overhung the streets of Rome. Pope's admirable imitations of Horace's Satires and Epistles, had recently appeared, were in every hand, and were by many readers thought

superior to the originals. What Pope had done for Horace, Johnson aspired to do for Juvenal. The enterprise was bold, and yet judicious. For between Johnson and Juvenal there was much in common ; much more, certainly, than between Pope and Horace.

Johnson's London appeared without his name in May, 1738. He received only ten guineas for this stately and vigorous poem ; but the sale was rapid and the success complete. A second edition was required within a week. Those small critics who are always desirous to lower the established reputations ran about proclaiming that the anonymous satirist was superior to Pope in Pope's own peculiar department of literature. It ought to be remembered, to the honor of Pope, that he joined heartily in the applause with which the appearance of a rival genius was welcomed. He made inquiries about the author of London. Such a man, he said, could not long be concealed. The name was soon discovered; and Pope, with great kindness, exerted himself to obtain an academical degree and the mastership of a grammar-school for the poor young poet. The attempt failed ; and Johnson remained a bookseller's hack.

It does not appear that these two men—the most eminent writer of the generation which was going out, and the most eminent writer of the generation which was coming in—ever saw each other. They lived in very different circles, one surrounded by dukes and earls, the other by starving pamphleteers and index-makers. Among Johnson's associates at this time may be mentioned Boyse, who, when his shirts were pledged, scrawled Latin verses sitting up in bed with his arms through two holes in his blanket, who composed very

respectable sacred poetry when he was sober, and who was at last run over by a hackney-coach when he was drunk; Hoole, surnamed the Metaphysical Tailor, who, instead of attending to his measures, used to trace geometrical diagrams on the board where he sat cross-legged; and the penitent impostor George Psalmanazar, who, after poring all day, in a humble lodging, on the folios of Jewish rabbis and Christian fathers, indulged himself at night with literary and theological conversation at an alehouse in the city. But the most remarkable of the persons with whom, at this time, Johnson consorted was Richard Savage, an earl's son, a shoemaker's apprentice, who had seen life in all its forms, who had feasted among blue ribbons in Saint James's Square, and had lain with fifty pounds' weight of irons on his legs in the condemned ward of Newgate. This man had, after many vicissitudes of fortune, sunk at last into abject and hopeless poverty. His pen had failed him. His patrons had been taken away by death, or estranged by the riotous profusion with which he squandered their bounty, and the ungrateful insolence with which he rejected their advice. He now lived by begging. He dined on venison and champagne whenever he had been so fortunate as to borrow a guinea. If his questing had been unsuccessful, he appeased the rage of hunger with some scraps of broken meat, and lay down to rest under the Piazza of Covent Garden in warm weather, and in cold weather as near as he could get to the furnace of a glass-house. Yet, in his misery, he was still an agreeable companion. He had an inexhaustible store of anecdotes about that gay and brilliant world from which he was now an outcast. He had observed the great men of both parties

in hours of careless relaxation, had seen the leaders of Opposition without the mask of patriotism, and had heard the Prime-minister roar with laughter and tell stories not over-decent. During some months, Savage lived in the closest familiarity with Johnson ; and then the friends parted, not without tears. Johnson remained in London to drudge for Cave. Savage went to the West of England, lived there as he had lived everywhere, and, in 1743, died, penniless and heart-broken, in Bristol jail.

Soon after his death, while the public curiosity was strongly excited about his extraordinary character, and his not less extraordinary adventures, a life of him appeared widely different from the catchpenny lives of eminent men which were then a staple article of manufacture in Grub Street. The style was, indeed, deficient in ease and variety; and the writer was evidently too partial to the Latin element of our language. But the little work, with all its faults, was a masterpiece. No finer specimen of literary biography existed in any language, living or dead; and a discerning critic might have confidently predicted that the author was destined to be the founder of a new school of English eloquence.

The Life of Savage was anonymous ; but it was well known in literary circles that Johnson was the writer. During the three years which followed, he produced no important work ; but he was not, and indeed could not be, idle. The fame of his abilities and learning continued to grow. Warburton pronounced him a man of parts and genius ; and the praise of Warburton was then no light thing. Such was Johnson's reputation that, in 1747, several eminent booksellers combined to employ him in the arduous work of preparing a Dic-

tionary of the English language, in two folio volumes. The sum which they agreed to pay him was only fifteen hundred guineas; and out of this sum he had to pay several poor men of letters who assisted him in the humbler parts of his task.

The prospectus of the Dictionary he addressed to the Earl of Chesterfield. Chesterfield had long been celebrated for the politeness of his manners, the brilliancy of his wit, and the delicacy of his taste. He was acknowledged to be the finest speaker in the House of Lords. He had recently governed Ireland, at a momentous conjuncture, with eminent firmness, wisdom, and humanity; and he had since become Secretary of State. He received Johnson's homage with the most winning affability, and requited it with a few guineas, bestowed, doubtless, in a very graceful manner, but was by no means desirous to see all his carpets blackened with the London mud, and his soups and wines thrown to right and left over the gowns of fine ladies and the waistcoats of fine gentlemen, by an absent, awkward scholar, who gave strange starts and uttered strange growls, who dressed like a scarecrow and ate like a cormorant. During some time Johnson continued to call on his patron, but, after being repeatedly told by the porter that his Lordship was not at home, took the hint, and ceased to present himself at the inhospitable door.

Johnson had flattered himself that he should have completed his Dictionary by the end of 1750; but it was not till 1755 that he at length gave his huge volumes to the world. During the seven years which he passed in the drudgery of penning definitions and marking quotations for transcription, he sought for relaxation in literary labor of a more agreeable kind.

In 1749 he published the Vanity of Human Wishes, an excellent imitation of the tenth satire of Juvenal. It is, in truth, not easy to say whether the palm belongs to the ancient or to the modern poet. The couplets in which the fall of Wolsey is described, though lofty and sonorous, are feeble when compared with the wonderful lines which bring before us all Rome in tumult on the day of the fall of Sejanus, the laurels on the door-posts, the white bull stalking towards the Capitol, the statues rolling down from their pedestals, the flatterers of the disgraced minister running to see him dragged with a hook through the streets, and to have a kick at his carcass before it is hurled into the Tiber. It must be owned, too, that in the concluding passage the Christian moralist has not made the most of his advantages, and has fallen decidedly short of the sublimity of his Pagan model. On the other hand, Juvenal's Hannibal must yield to Johnson's Charles; and Johnson's vigorous and pathetic enumeration of the miseries of a literary life must be allowed to be superior to Juvenal's lamentation over the fate of Demosthenes and Cicero.

For the copyright of the Vanity of Human Wishes Johnson received only fifteen guineas.

A few days after the publication of this poem, his tragedy, begun many years before, was brought on the stage. His pupil, David Garrick, had, in 1741, made his appearance on an humble stage in Goodman's Fields, had at once risen to the first place among actors, and was now, after several years of almost uninterrupted success, manager of Drury Lane Theatre. The relation between him and his old preceptor was of a very singular kind. They repelled

each other strongly, and yet attracted each other strongly. Nature had made them of very different clay; and circumstances had fully brought out the natural peculiarities of both. Sudden prosperity had turned Garrick's head. Continued adversity had soured Johnson's temper. Johnson saw, with more envy than became so great a man, the villa, the plate, the china, the Brussels carpet, which the little mimic had got by repeating, with grimaces and gesticulations, what wiser men had written; and the exquisitely sensitive vanity of Garrick was galled by the thought that, while all the rest of the world was applauding him, he could obtain from one morose cynic, whose opinion it was impossible to despise, scarcely any compliment not acidulated with scorn. Yet the two Lichfield men had so many early recollections in common, and sympathized with each other on so many points on which they sympathized with nobody else in the vast population of the capital, that, though the master was often provoked by the monkey-like impertinence of the pupil, and the pupil by the bearish rudeness of the master, they remained friends till they were parted by death. Garrick now brought Irene out, with alterations sufficient to displease the author, yet not sufficient to make the piece pleasing to the audience. The public, however, listened with little emotion, but with much civility, to five acts of monotonous declamation. After nine representations, the play was withdrawn. It is, indeed, altogether unsuited to the stage, and, even when perused in the closet, will be found hardly worthy of the author. He had not the slightest notion of what blank verse should be. A change in the last syllable of every other line would make the versification of the

Vanity of Human Wishes closely resemble the versification of Irene. The poet, however, cleared by his benefit nights, and by the sale of the copyright of his tragedy, about three hundred pounds, then a great sum in his estimation.

About a year after the representation of Irene, he began to publish a series of short essays on morals, manners, and literature. This species of composition had been brought into fashion by the success of the Tatler, and by the still more brilliant success of the Spectator. A crowd of small writers had vainly attempted to rival Addison. The Lay Monastery, the Censor, the Freethinker, the Plain Dealer, the Champion, and other works of the same kind, had had their short day. None of them had obtained a permanent place in our literature ; and they are now to be found only in the libraries of the curious. At length Johnson undertook the adventure in which so many aspirants had failed. In the thirty-sixth year after the appearance of the last number of the Spectator appeared the first number of the Rambler. From March, 1750, to March, 1752, this paper continued to come out every Tuesday and Saturday.

From the first the Rambler was enthusiastically admired by a few eminent men. Richardson, when only five numbers had appeared, pronounced it equal, if not superior, to the Spectator. Young and Hartley expressed their approbation not less warmly. Bubb Dodington, among whose many faults indifference to the claims of genius and learning cannot be reckoned, solicited the acquaintance of the writer. In consequence, probably, of the good offices of Dodington, who was then the confidential adviser of Prince Frederic, two of

his Royal Highness's gentlemen carried a gracious message to the printing-office, and ordered seven copies for Leicester House. But these overtures seem to have been very coldly received. Johnson had had enough of the patronage of the great to last him all his life, and was not disposed to haunt any other door as he had haunted the door of Chesterfield.

By the public the Rambler was at first very coldly received. Though the price of a number was only twopence, the sale did not amount to five hundred. The profits were therefore very small. But as soon as the flying leaves were collected and reprinted, they became popular. The author lived to see thirteen thousand copies spread over England alone. Separate editions were published for the Scotch and Irish markets. A large party pronounced the style perfect, so absolutely perfect that in some essays it would be impossible for the writer himself to alter a single word for the better. Another party, not less numerous, vehemently accused him of having corrupted the purity of the English tongue. The best critics admitted that his diction was too monotonous, too obviously artificial, and now and then turgid even to absurdity. But they did justice to the acuteness of his observations on morals and manners, to the constant precision and frequent brilliancy of his language, to the weighty and magnificent eloquence of many serious passages, and to the solemn yet pleasing humor of some of the lighter papers. On the question of precedence between Addison and Johnson—a question which, seventy years ago, was much disputed—posterity has pronounced a decision from which there is no appeal. Sir Roger, his chaplain and his butler, Will Wimble and Will Honeycomb,

the Vision of Mirza, the Journal of the Retired Citizen, the Everlasting Club, the Dunmow Flitch, the Loves of Hilpah and Shalum, the Visit to the Exchange, and the Visit to the Abbey are known to everybody. But many men and women, even of highly cultivated minds, are unacquainted with Squire Bluster and Mrs. Busy, Quisquilius and Venustulus, the Allegory of Wit and Learning, the Chronicle of the Revolutions of a Garret, and the sad fate of Aningait and Ajut.

The last Rambler was written in a sad and gloomy hour. Mrs. Johnson had been given over by the physicians. Three days later she died. She left her husband almost broken-hearted. Many people had been surprised to see a man of his genius and learning stooping to every drudgery, and denying himself almost every comfort, for the purpose of supplying a silly, affected old woman with superfluities, which she accepted with but little gratitude. But all his affection had been concentrated on her. He had neither brother nor sister, neither son nor daughter. To him she was beautiful as the Gunnings, and witty as Lady Mary. Her opinion of his writings was more important to him than the voice of the pit of Drury Lane Theatre or the judgment of the Monthly Review. The chief support which had sustained him through the most arduous labor of his life was the hope that she would enjoy the fame and the profit which he anticipated from his Dictionary. She was gone ; and in that vast labyrinth of streets, peopled by eight hundred thousand human beings, he was alone. Yet it was necessary for him to set himself, as he expressed it, doggedly to work. After three more laborious years, the Dictionary was at length complete.

It had been generally supposed that this great work would be dedicated to the eloquent and accomplished nobleman to whom the prospectus had been addressed. He well knew the value of such a compliment ; and, therefore, when the day of publication drew near, he exerted himself to soothe, by a show of zealous, and, at the same time, of delicate and judicious kindness, the pride which he had so cruelly wounded. Since the Ramblers had ceased to appear, the town had been entertained by a journal called The World, to which many men of high rank and fashion contributed. In two successive numbers of The World the Dictionary was, to use the modern phrase, puffed with wonderful skill. The writings of Johnson were warmly praised. It was proposed that he should be invested with the authority of a Dictator, nay, of a Pope, over our language, and that his decisions about the meaning and the spelling of words should be received as final. His two folios, it was said, would of course be bought by everybody who could afford to buy them. It was soon known that these papers were written by Chesterfield. But the just resentment of Johnson was not to be so appeased. In a letter written with singular energy and dignity of thought and language, he repelled the tardy advances of his patron. The Dictionary came forth without a dedication. In the preface the author truly declared that he owed nothing to the great, and described the difficulties with which he had been left to struggle so forcibly and pathetically that the ablest and most malevolent of all the enemies of his fame, Horne Tooke, never could read that passage without tears.

The public, on this occasion, did Johnson full justice, and something more than justice. The best lexico-

grapher may well be content if his productions are received by the world with cold esteem. But Johnson's Dictionary was hailed with an enthusiasm such as no similar work has ever excited. It was, indeed, the first dictionary which could be read with pleasure. The definitions show so much acuteness of thought and command of language, and the passages quoted from poets, divines, and philosophers are so skilfully selected that a leisure hour may always be very agreeably spent in turning over the pages. The faults of the book resolve themselves, for the most part, into one great fault. Johnson was a wretched etymologist. He knew little or nothing of any Teutonic language except English, which, indeed, as he wrote it, was scarcely a Teutonic language ; and thus he was absolutely at the mercy of Junius and Skinner.

The Dictionary, though it raised Johnson's fame, added nothing to his pecuniary means. The fifteen hundred guineas which the booksellers had agreed to pay him had been advanced and spent before the last sheets issued from the press. It is painful to relate that, twice in the course of the year which followed the publication of this great work, he was arrested and carried to sponging-houses, and that he was twice indebted for his liberty to his excellent friend Richardson. It was still necessary for the man who had been formally saluted by the highest authority as Dictator of the English language to supply his wants by constant toil. He abridged his Dictionary. He proposed to bring out an edition of Shakspeare by subscription ; and many subscribers sent in their names, and laid down their money; but he soon found the task so little to his taste that he turned to more attractive employments. He con-

tributed many papers to a new monthly journal which was called the Literary Magazine. Few of these papers have much interest; but among them was the very best thing that he ever wrote, a masterpiece both of reasoning and of satirical pleasantry, the review of Jenyns's Inquiry into the Nature and Origin of Evil.

In the spring of 1758 Johnson put forth the first of a series of essays entitled The Idler. During two years these essays continued to appear weekly. They were eagerly read, widely circulated, and, indeed, impudently pirated, while they were still in the original form, and had a large sale when collected into volumes. The Idler may be described as the second part of the Rambler, somewhat livelier and somewhat weaker than the first part.

While Johnson was busied with his Idlers, his mother, who had accomplished her ninetieth year, died at Lichfield. It was long since he had seen her; but he had not failed to contribute largely, out of his small means, to her comfort. In order to defray the charges of her funeral, and to pay some debts which she had left, he wrote a little book in a single week, and sent off the sheets to the press without reading them over. A hundred pounds were paid him for the copyright; and the purchasers had great cause to be pleased with their bargain, for the book was Rasselas.

The success of Rasselas was great, though such ladies as Miss Lydia Languish must have been grievously disappointed when they found that the new volume from the circulating library was little more than a dissertation on the author's favorite theme, the Vanity of Human Wishes; that the Prince of Abyssinia was without a mistress, and the Princess without a lover; and that

the story set the hero and the heroine down exactly where it had taken them up. The style was the subject of much eager controversy. The Monthly Review and the Critical Review took different sides. Many readers pronounced the writer a pompous pedant, who would never use a word of two syllables where it was possible to use a word of six, and who could not make a waiting-woman relate her adventures without balancing every noun with another noun, and every epithet with another epithet. Another party, not less zealous, cited with delight numerous passages in which weighty meaning was expressed with accuracy and illustrated with splendor. And both the censure and the praise were merited.

About the plan of Rasselas little was said by the critics ; and yet the faults of the plan might seem to invite severe criticism. Johnson has frequently blamed Shakspeare for neglecting the proprieties of time and place, and for ascribing to one age or nation the manners and opinions of another. Yet Shakspeare has not sinned in this way more grievously than Johnson. Rasselas and Imlac, Nekayah and Pekuah, are evidently meant to be Abyssinians of the eighteenth century : for the Europe which Imlac describes is the Europe of the eighteenth century ; and the inmates of the Happy Valley talk familiarly of that law of gravitation which Newton discovered, and which was not fully received, even at Cambridge, till the eighteenth century. What a real company of Abyssinians would have been may be learned from Bruce's Travels. But Johnson, not content with turning filthy savages, ignorant of their letters, and gorged with raw steaks cut from living cows, into philosophers as eloquent and

enlightened as himself or his friend Burke, and into ladies as highly accomplished as Mrs. Lennox or Mrs. Sheridan, transferred the whole domestic system of England to Egypt. Into a land of harems, a land of polygamy, a land where women are married without ever being seen, he introduced the flirtations and jealousies of our ball-rooms. In a land where there is boundless liberty of divorce, wedlock is described as the indissoluble compact. "A youth and maiden meeting by chance, or brought together by artifice, exchange glances, reciprocate civilities, go home, and dream of each other. Such," says Rasselas, "is the common process of marriage." Such it may have been, and may still be, in London, but assuredly not at Cairo. A writer who was guilty of such improprieties had little right to blame the poet who made Hector quote Aristotle, and represented Julio Romano as flourishing in the days of the oracle of Delphi.

By such exertions as have been described, Johnson supported himself till the year 1762. In that year a great change in his circumstances took place. He had, from a child, been an enemy of the reigning dynasty. His Jacobite prejudices had been exhibited with little disguise, both in his works and in his conversation. Even in his massy and elaborate Dictionary, he had, with a strange want of taste and judgment, inserted bitter and contumelious reflections on the Whig party. The excise which was a favorite resource of Whig financiers he had designated as a hateful tax. He had railed against the commissioners of excise in language so coarse that they had seriously thought of prosecuting him. He had, with difficulty, been prevented from holding up the Lord Privy Seal by name, as an example

of the meaning of the word "renegade." A pension he had defined as pay given to a state hireling to betray his country; a pensioner, as a slave of state hired by a stipend to obey a master. It seemed unlikely that the author of these definitions would himself be pensioned. But that was a time of wonders. George the Third had ascended the throne; and had, in the course of a few months, disgusted many of the old friends, and conciliated many of the old enemies, of his house. The city was becoming mutinous. Oxford was becoming loyal. Cavendishes and Bentincks were murmuring. Somersets and Wyndhams were hastening to kiss hands. The head of the Treasury was now Lord Bute, who was a Tory, and could have no objection to Johnson's Toryism. Bute wished to be thought a patron of men of letters; and Johnson was one of the most eminent and one of the most needy men of letters in Europe. A pension of three hundred a year was graciously offered, and with very little hesitation accepted.

This event produced a change in Johnson's whole way of life. For the first time since his boyhood, he no longer felt the daily goad urging him to the daily toil. He was at liberty, after thirty years of anxiety and drudgery, to indulge his constitutional indolence, to lie in bed till two in the afternoon, and to sit up talking till four in the morning, without fearing either the printer's devil or the sheriff's officer.

One laborious task, indeed, he had bound himself to perform. He had received large subscriptions for his promised edition of Shakspeare; he had lived on those subscriptions during some years; and he could not, without disgrace, omit to perform his part of the contract. His friends repeatedly exhorted him to make

an effort ; and he repeatedly resolved to do so. But, notwithstanding their exhortations and his resolutions, month followed month, year followed year, and nothing was done. He prayed fervently against his idleness ; he determined, as often as he received the sacrament, that he would no longer doze away and trifle away his time ; but the spell under which he lay resisted prayer and sacrament. His private notes, at this time, are made up of self-reproaches. "My indolence," he wrote on Easter-eve, in 1764, "has sunk into grosser sluggishness. A kind of strange oblivion has overspread me, so that I know not what has become of the last year." Easter, 1765, came, and found him still in the same state. "My time," he wrote, "has been unprofitably spent, and seems as a dream that has left nothing behind. My memory grows confused, and I know not how the days pass over me." Happily for his honor, the charm which held him captive was at length broken by no gentle or friendly hand. He had been weak enough to pay serious attention to a story about a ghost which haunted a house in Cock Lane, and had actually gone himself, with some of his friends, at one in the morning, to St. John's Church, Clerkenwell, in the hope of receiving a communication from the perturbed spirit. But the spirit, though adjured with all solemnity, remained obstinately silent ; and it soon appeared that a naughty girl of eleven had been amusing herself by making fools of so many philosophers. Churchill, who, confident in his powers, drunk with popularity, and burning with party spirit, was looking for some man of established fame and Tory politics to insult, celebrated the Cock Lane Ghost in three cantos, nicknamed Johnson Pomposo, asked where

the book was which had been so long promised and so liberally paid for, and directly accused the great moralist of cheating. This terrible word proved effectual; and in October, 1765, appeared, after a delay of nine years, the new edition of Shakspeare.

This publication saved Johnson's character for honesty, but added nothing to the fame of his abilities and learning. The preface, though it contains some good passages, is not in his best manner. The most valuable notes are those in which he had an opportunity of showing how attentively he had during many years observed human life and human nature. The best specimen is the note on the character of Polonius. Nothing so good is to be found even in Wilhelm Meister's admirable examination of Hamlet. But here praise must end. It would be difficult to name a more slovenly, a more worthless, edition of any great classic. The reader may turn over play after play without finding one happy conjectural emendation, or one ingenious and satisfactory explanation of a passage which had baffled preceding commentators. Johnson had, in his prospectus, told the world that he was peculiarly fitted for the task which he had undertaken, because he had, as a lexicographer, been under the necessity of taking a wider view of the English language than any of his predecessors. That his knowledge of our literature was extensive is indisputable. But, unfortunately, he had altogether neglected that very part of our literature with which it is especially desirable that an editor of Shakspeare should be conversant. It is dangerous to assert a negative. Yet little will be risked by the assertion that in the two folio volumes of the English Dictionary there is not a single passage quoted from

any dramatist of the Elizabethan age, except Shakspeare and Ben. Even from Ben the quotations are few. Johnson might easily, in a few months, have made himself well acquainted with every old play that was extant. But it never seems to have occurred to him that this was a necessary preparation for the work which he had undertaken. He would, doubtless, have admitted that it would be the height of absurdity in a man who was not familiar with the works of Æschylus and Euripides to publish an edition of Sophocles. Yet he ventured to publish an edition of Shakspeare without having ever in his life, as far as can be discovered, read a single scene of Massinger, Ford, Decker, Webster, Marlowe, Beaumont, or Fletcher. His detractors were noisy and scurrilous. Those who most loved and honored him had little to say in praise of the manner in which he had discharged the duty of a commentator. He had, however, acquitted himself of a debt which had long lain heavy on his conscience ; and he sank back into the repose from which the sting of satire had roused him. He long continued to live upon the fame which he had already won. He was honored by the University of Oxford with a Doctor's degree, by the Royal Academy with a professorship, and by the King with an interview, in which his Majesty most graciously expressed a hope that so excellent a writer would not cease to write. In the interval, however, between 1765 and 1775 Johnson published only two or three political tracts, the longest of which he could have produced in forty-eight hours, if he had worked as he worked on the Life of Savage and on Rasselas.

But, though his pen was now idle, his tongue was active. The influence exercised by his conversation,

directly upon those with whom he lived, and indirectly on the whole literary world, was altogether without a parallel. His colloquial talents were, indeed, of the highest order. He had strong sense, quick discernment, wit, humor, immense knowledge of literature and of life, and an infinite store of curious anecdotes. As respected style, he spoke far better than he wrote. Every sentence which dropped from his lips was as correct in structure as the most nicely balanced period of the Rambler. But in his talk there were no pompous triads, and little more than a fair proportion of words in *osity* and *ation*. All was simplicity, ease, and vigor. He uttered his short, weighty, and pointed sentences with a power of voice and a justness and energy of emphasis of which the effect was rather increased than diminished by the rollings of his huge form, and by the asthmatic gaspings and puffings in which the peals of his eloquence generally ended. Nor did the laziness which made him unwilling to sit down to his desk prevent him from giving instruction or entertainment orally. To discuss questions of taste, of learning, of casuistry, in language so exact and so forcible that it might have been printed without the alteration of a word, was to him no exertion, but a pleasure. He loved, as he said, to fold his legs and have his talk out. He was ready to bestow the overflowings of his full mind on anybody who would start a subject, on a fellow-passenger in a stage-coach, or on the person who sat at the same table with him in an eating-house. But his conversation was nowhere so brilliant and striking as when he was surrounded by a few friends whose abilities and knowledge enabled them, as he once expressed it, to send him back every ball that he

threw. Some of these, in 1764, formed themselves into a club, which gradually became a formidable power in the commonwealth of letters. The verdicts pronounced by this conclave on new books were speedily known over all London, and were sufficient to sell off a whole edition in a day, or to condemn the sheets to the service of the trunk-maker and the pastry-cook. Nor shall we think this strange when we consider what great and various talents and acquirements met in the little fraternity. Goldsmith was the representative of poetry and light literature, Reynolds of the arts, Burke of political eloquence and political philosophy. There, too, were Gibbon, the greatest historian, and Jones, the greatest linguist, of the age. Garrick brought to the meetings his inexhaustible pleasantry, his incomparable mimicry, and his consummate knowledge of stage effect. Among the most constant attendants were two high-born and high-bred gentlemen, closely bound together by friendship, but of widely different characters and habits; Bennet Langton, distinguished by his skill in Greek literature, by the orthodoxy of his opinions, and by the sanctity of his life; and Topham Beauclerk, renowned for his amours, his knowledge of the gay world, his fastidious taste, and his sarcastic wit. To predominate over such a society was not easy. Yet even over such a society Johnson predominated. Burke might, indeed, have disputed the supremacy to which others were under the necessity of submitting. But Burke, though not generally a very patient listener, was content to take the second part when Johnson was present; and the club itself, consisting of so many eminent men, is to this day popularly designated as Johnson's Club.

Among the members of this celebrated body was one to whom it has owed the greater part of its celebrity, yet who was regarded with little respect by his brethren, and had not without difficulty obtained a seat among them. This was James Boswell, a young Scotch lawyer, heir to an honorable name and a fair estate. That he was a coxcomb and a bore, weak, vain, pushing, curious, garrulous, was obvious to all who were acquainted with him. That he could not reason, that he had no wit, no humor, no eloquence, is apparent from his writings. And yet his writings are read beyond the Mississippi and under the Southern Cross, and are likely to be read as long as the English exists, either as a living or as a dead language. Nature had made him a slave and an idolater. His mind resembled those creepers which the botanists call parasites, and which can subsist only by clinging round the stems and imbibing the juices of stronger plants. He must have fastened himself on somebody. He might have fastened himself on Wilkes, and have become the fiercest patriot in the Bill of Rights Society. He might have fastened himself on Whitefield, and have become the loudest field preacher among the Calvinistic Methodists. In a happy hour he fastened himself on Johnson. The pair might seem ill-matched. For Johnson had early been prejudiced against Boswell's country. To a man of Johnson's strong understanding and irritable temper, the silly egotism and adulation of Boswell must have been as teasing as the constant buzz of a fly. Johnson hated to be questioned ; and Boswell was eternally catechising him on all kinds of subjects, and sometimes propounded such questions as " What would you do, sir, if you were locked up in a tower with a baby ? "

Topham Beauclerk.

Engraved by Samuel Bellin, from a drawing by G. P. Harding.

Johnson was a water-drinker ; and Boswell was a wine-bibber, and, indeed, little better than an habitual sot. It was impossible that there should be perfect harmony between two such companions. Indeed, the great man was sometimes provoked into fits of passion in which he said things which the small man, during a few hours, seriously resented. Every quarrel, however, was soon made up. During twenty years the disciple continued to worship the master ; the master continued to scold the disciple, to sneer at him, and to love him. The two friends ordinarily resided at a great distance from each other. Boswell practised in the Parliament House of Edinburgh, and could pay only occasional visits to London. During those visits his chief business was to watch Johnson, to discover all Johnson's habits, to turn the conversation to subjects about which Johnson was likely to say something remarkable, and to fill quarto note-books with minutes of what Johnson had said. In this way were gathered the materials out of which was afterwards constructed the most interesting biographical work in the world.

Soon after the club began to exist, Johnson formed a connection less important, indeed, to his fame, but much more important to his happiness, than his connection with Boswell. Henry Thrale, one of the most opulent brewers in the kingdom, a man of sound and cultivated understanding, rigid principles, and liberal spirit, was married to one of those clever, kind-hearted, engaging, vain, pert young women who are perpetually doing or saying what is not exactly right, but who, do or say what they may, are always agreeable. In 1765, the Thrales became acquainted with Johnson ; and the acquaintance ripened fast into friendship. They were

astonished and delighted by the brilliancy of his conversation. They were flattered by finding that a man so widely celebrated preferred their house to any other in London. Even the peculiarities which seemed to unfit him for civilized society—his gesticulations, his rollings, his puffings, his mutterings, the strange way in which he put on his clothes, the ravenous eagerness with which he devoured his dinner, his fits of melancholy, his fits of anger, his frequent rudeness, his occasional ferocity—increased the interest which his new associates took in him. For these things were the cruel marks left behind by a life which had been one long conflict with disease and with adversity. In a vulgar hack writer such oddities would have excited only disgust. But in a man of genius, learning, and virtue their effect was to add pity to admiration and esteem. Johnson soon had an apartment at the brewery in Southwark, and a still more pleasant apartment at the villa of his friends on Streatham Common. A large part of every year he passed in those abodes—abodes which must have seemed magnificent and luxurious, indeed, when compared with the dens in which he had generally been lodged. But his chief pleasures were derived from what the astronomer of his Abyssinian tale called "the endearing elegance of female friendship." Mrs. Thrale rallied him, soothed him, coaxed him, and, if she sometimes provoked him by her flippancy, made ample amends by listening to his reproofs with angelic sweetness of temper. When he was diseased in body and in mind, she was the most tender of nurses. No comfort that wealth could purchase, no contrivance that womanly ingenuity, set to work by womanly compassion, could devise, was wanting to his

sick-room. He requited her kindness by an affection pure as the affection of a father, yet delicately tinged with a gallantry which, though awkward, must have been more flattering than the attentions of a crowd of the fools who gloried in the names, now obsolete, of Buck and Macaroni. It should seem that a full half of Johnson's life, during about sixteen years, was passed under the roof of the Thrales. He accompanied the family sometimes to Bath and sometimes to Brighton, once to Wales, and once to Paris. But he had at the same time a house in one of the narrow and gloomy courts on the north of Fleet Street. In the garrets was his library, a large and miscellaneous collection of books, falling to pieces and begrimed with dust. On a lower floor he sometimes, but very rarely, regaled a friend with a plain dinner—a veal pie, or a leg of lamb and spinage, and a rice pudding. Nor was the dwelling uninhabited during his long absences. It was the home of the most extraordinary assemblage of inmates that ever was brought together. At the head of the establishment Johnson had placed an old lady named Williams, whose chief recommendations were her blindness and her poverty. But, in spite of her murmurs and reproaches, he gave an asylum to another lady who was as poor as herself, Mrs. Desmoulins, whose family he had known many years before in Staffordshire. Room was found for the daughter of Mrs. Desmoulins, and for another destitute damsel, who was generally addressed as Miss Carmichael, but whom her generous host called Polly. An old quack doctor named Levett, who bled and dosed coalheavers and hackney-coachmen, and received for fees crusts of bread, bits of bacon, glasses of gin, and sometimes a little copper, completed

this strange menagerie. All these poor creatures were at constant war with each other, and with Johnson's negro servant Frank. Sometimes, indeed, they transferred their hostilities from the servant to the master, complained that a better table was not kept for them, and railed or maundered till their benefactor was glad to make his escape to Streatham, or to the Mitre Tavern. And yet he, who was generally the haughtiest and most irritable of mankind, who was but too prompt to resent anything which looked like a slight on the part of a purse-proud bookseller or of a noble and powerful patron, bore patiently from mendicants, who, but for his bounty, must have gone to the workhouse, insults more provoking than those for which he had knocked down Osborne and bidden defiance to Chesterfield. Year after year Mrs. Williams and Mrs. Desmoulins, Polly and Levett, continued to torment him and to live upon him.

The course of life which has been described was interrupted in Johnson's sixty-fourth year by an important event. He had early read an account of the Hebrides, and had been much interested by learning that there was so near him a land peopled by a race which was still as rude and simple as in the Middle Ages. A wish to become intimately acquainted with a state of society so utterly unlike all that he had ever seen frequently crossed his mind. But it is not probable that his curiosity would have overcome his habitual sluggishness, and his love of the smoke, the mud, and the cries of London, had not Boswell importuned him to attempt the adventure, and offered to be his squire. At length, in August, 1773, Johnson crossed the Highland line, and plunged courageously into what was

Dr. Johnson's house in Fleet Street.

Redrawn from an old print.

then considered, by most Englishmen, as a dreary and perilous wilderness. After wandering about two months through the Celtic region, sometimes in rude boats which did not protect him from the rain, and sometimes on small shaggy ponies which could hardly bear his weight, he returned to his old haunts with a mind full of new images and new theories. During the following year he employed himself in recording his adventures. About the beginning of 1775, his Journey to the Hebrides was published, and was, during some weeks, the chief subject of conversation in all circles in which any attention was paid to literature. The book is still read with pleasure. The narrative is entertaining ; the speculations, whether sound or unsound, are always ingenious ; and the style, though too stiff and pompous, is somewhat easier and more graceful than that of his early writings. His prejudice against the Scotch had at length become little more than matter of jest ; and whatever remained of the old feeling had been effectually removed by the kind and respectful hospitality with which he had been received in every part of Scotland. It was, of course, not to be expected that an Oxonian Tory should praise the Presbyterian polity and ritual, or that an eye accustomed to the hedgerows and parks of England should not be struck by the bareness of Berwickshire and East Lothian. But even in censure Johnson's tone is not unfriendly. The most enlightened Scotchmen, with Lord Mansfield at their head, were well pleased. But some foolish and ignorant Scotchmen were moved to anger by a little unpalatable truth which was mingled with much eulogy, and assailed him whom they chose to consider as the enemy of their country with libels much more

dishonorable to their country than anything that he had ever said or written. They published paragraphs in the newspapers, articles in the magazines, sixpenny pamphlets, five-shilling books. One scribbler abused Johnson for being blear-eyed, another for being a pensioner; a third informed the world that one of the Doctor's uncles had been convicted of felony in Scotland, and had found that there was in that country one tree capable of supporting the weight of an Englishman. Macpherson, whose Fingal had been proved in the Journey to be an impudent forgery, threatened to take vengeance with a cane. The only effect of this threat was that Johnson reiterated the charge of forgery in the most contemptuous terms, and walked about, during some time, with a cudgel, which, if the impostor had not been too wise to encounter it, would assuredly have descended upon him, to borrow the sublime language of his own epic poem, "like a hammer on the red son of the furnace."

Of other assailants Johnson took no notice whatever. He had early resolved never to be drawn into controversy; and he adhered to his resolution with a steadfastness which is the more extraordinary, because he was, both intellectually and morally, of the stuff of which controversialists are made. In conversation he was a singularly eager, acute, and pertinacious disputant. When at a loss for good reasons, he had recourse to sophistry; and when heated by altercation, he made unsparing use of sarcasm and invective. But when he took his pen in his hand his whole character seemed to be changed. A hundred bad writers misrepresented him and reviled him; but not one of the hundred could boast of having been thought by him worthy of a refut-

ation, or even of a retort. The Kenricks, Campbells, MacNicols, and Hendersons did their best to annoy him, in the hope that he would give them importance by answering them. But the reader will in vain search his works for any allusion to Kenrick or Campbell, to MacNicol or Henderson. One Scotchman, bent on vindicating the fame of Scotch learning, defied him to the combat in a detestable Latin hexameter :

"Maxime, si tu vis, cupio contendere tecum."

But Johnson took no notice of the challenge. He had learned, both from his own observation and from literary history, in which he was deeply read, that the place of books in the public estimation is fixed, not by what is written about them, but by what is written in them ; and that an author whose works are likely to live is very unwise if he stoops to wrangle with detractors whose works are certain to die. He always maintained that fame was a shuttlecock which could be kept up only by being beaten back as well as beaten forward, and which would soon fall if there were only one battledoor. No saying was oftener in his mouth than that fine apothegm of Bentley, that no man was ever written down but by himself.

Unhappily, a few months after the appearance of the Journey to the Hebrides, Johnson did what none of his envious assailants could have done, and to a certain extent succeeded in writing himself down. The disputes between England and her American colonies had reached a point at which no amicable adjustment was possible. Civil war was evidently impending ; and the ministers seem to have thought that the eloquence of Johnson might with advantage be employed to inflame

the nation against the Opposition here and against the rebels beyond the Atlantic. He had already written two or three tracts in defence of the foreign and domestic policy of the government ; and those tracts, though hardly worthy of him, were much superior to the crowd of pamphlets which lay on the counters of Almon and Stockdale. But his Taxation no Tyranny was a pitiable failure. The very title was a silly phrase, which can have been recommended to his choice by nothing but a jingling alliteration which he ought to have despised. The arguments were such as boys use in debating-societies. The pleasantry was as awkward as the gambols of a hippopotamus. Even Boswell was forced to own that, in this unfortunate piece, he could detect no trace of his master's powers. The general opinion was that the strong faculties which had produced the Dictionary and the Rambler were beginning to feel the effect of time and of disease, and that the old man would best consult his credit by writing no more.

But this was a great mistake. Johnson had failed, not because his mind was less vigorous than when he wrote Rasselas in the evenings of a week, but because he had foolishly chosen, or suffered others to choose for him, a subject such as he would at no time have been competent to treat. He was in no sense a statesman. He never willingly read or thought or talked about affairs of state. He loved biography, literary history, the history of manners ; but political history was positively distasteful to him. The question at issue between the colonies and the mother country was a question about which he had really nothing to say. He failed, therefore, as the greatest men must fail when

they attempt to do that for which they are unfit ; as Burke would have failed if Burke had tried to write comedies like those of Sheridan ; as Reynolds would have failed if Reynolds had tried to paint landscapes like those of Wilson. Happily, Johnson soon had an opportunity of proving most signally that his failure was not to be ascribed to intellectual decay.

On Easter-eve, 1777, some persons deputed by a meeting which consisted of forty of the first booksellers in London called upon him. Though he had some scruples about doing business at that season, he received his visitors with much civility. They came to inform him that a new edition of the English poets, from Cowley downwards, was in contemplation, and to ask him to furnish short biographical prefaces. He readily undertook the task—a task for which he was pre-eminently qualified. His knowledge of the literary history of England since the Restoration was unrivalled. That knowledge he had derived partly from books, and partly from sources which had long been closed ; from old Grub Street traditions ; from the talk of forgotten poetasters and pamphleteers who had long been lying in parish vaults ; from the recollections of such men as Gilbert Walmesley, who had conversed with the wits of Button's ; Cibber, who had mutilated the plays of two generations of dramatists ; Orrery, who had been admitted to the society of Swift ; and Savage, who had rendered services of no very honorable kind to Pope. The biographer therefore sat down to his task with a mind full of matter. He had at first intended to give only a paragraph to every minor poet, and only four or five pages to the greatest name. But the flood of anecdote and criticism overflowed the narrow channel.

The work, which was originally meant to consist only of a few sheets, swelled into ten volumes ; small volumes, it is true, and not closely printed. The first four appeared in 1779, the remaining six in 1781.

The Lives of the Poets are, on the whole, the best of Johnson's works. The narratives are as entertaining as any novel. The remarks on life and on human nature are eminently shrewd and profound. The criticisms are often excellent, and, even when grossly and provokingly unjust, well deserve to be studied. For, however erroneous they may be, they are never silly. They are the judgments of a mind trammelled by prejudice and deficient in sensibility, but vigorous and acute. They therefore generally contain a portion of valuable truth which deserves to be separated from the alloy; and, at the very worst, they mean something, a praise to which much of what is called criticism in our time has no pretensions.

Savage's Life Johnson reprinted nearly as it had appeared in 1744. Whoever, after reading that life, will turn to the other lives will be struck by the difference of style. Since Johnson had been at ease in his circumstances he had written little and had talked much. When, therefore, he, after the lapse of years, resumed his pen, the mannerism which he had contracted while he was in the constant habit of elaborate composition was less perceptible than formerly ; and his diction frequently had a colloquial ease which it had formerly wanted. The improvement may be discerned by a skilful critic in the Journey to the Hebrides, and in the Lives of the Poets is so obvious that it cannot escape the notice of the most careless reader.

Among the Lives the best are, perhaps, those of

Cowley, Dryden, and Pope. The very worst is, beyond all doubt, that of Gray.

This great work at once became popular. There was, indeed, much just and much unjust censure ; but even those who were loudest in blame were attracted by the book in spite of themselves. Malone computed the gains of the publishers at five or six thousand pounds. But the writer was very poorly remunerated. Intending at first to write very short prefaces, he had stipulated for only two hundred guineas. The booksellers, when they saw how far his performance had surpassed his promise, added only another hundred. Indeed, Johnson, though he did not despise, or affect to despise, money, and though his strong sense and long experience ought to have qualified him to protect his own interests, seems to have been singularly unskilful and unlucky in his literary bargains. He was generally reputed the first English writer of his time. Yet several writers of his time sold their copyrights for sums such as he never ventured to ask. To give a single instance, Robertson received four thousand five hundred pounds for the History of Charles the Fifth ; and it is no disrespect to the memory of Robertson to say that the History of Charles the Fifth is both a less valuable and a less amusing book than the Lives of the Poets.

Johnson was now in his seventy-second year. The infirmities of age were coming fast upon him. That inevitable event of which he never thought without horror was brought near to him ; and his whole life was darkened by the shadow of death. He had often to pay the cruel price of longevity. Every year he lost what could never be replaced. The strange dependents to whom he had given shelter, and to whom, in spite of

their faults, he was strongly attached by habit, dropped off one by one ; and, in the silence of his home, he regretted even the noise of their scolding-matches. The kind and generous Thrale was no more ; and it would have been well if his wife had been laid beside him. But she survived to be the laughing-stock of those who had envied her, and to draw from the eyes of the old man who had loved her beyond anything in the world tears far more bitter than he would have shed over her grave. With some estimable and many agreeable qualities, she was not made to be independent. The control of a mind more steadfast than her own was necessary to her respectability. While she was restrained by her husband, a man of sense and firmness, indulgent to her taste in trifles, but always the undisputed master of his house, her worst offences had been impertinent jokes, white lies, and short fits of pettishness ending in sunny good-humor. But he was gone ; and she was left an opulent widow of forty, with strong sensibility, volatile fancy, and slender judgment. She soon fell in love with a music-master from Brescia, in whom nobody but herself could discover anything to admire. Her pride, and perhaps some better feelings, struggled hard against this degrading passion. But the struggle irritated her nerves, soured her temper, and at length endangered her health. Conscious that her choice was one which Johnson could not approve, she became desirous to escape from his inspection. Her manner towards him changed. She was sometimes cold and sometimes petulant. She did not conceal her joy when he left Streatham ; she never pressed him to return ; and, if he came unbidden, she received him in a manner which convinced him that he was no

longer a welcome guest. He took the very intelligible hints which she gave. He read, for the last time, a chapter of the Greek Testament in the library which had been formed by himself. In a solemn and tender prayer he commended the house and its inmates to the Divine protection, and, with emotions which choked his voice and convulsed his powerful frame, left forever that beloved home for the gloomy and desolate house behind Fleet Street, where the few and evil days which still remained to him were to run out. Here, in June, 1783, he had a paralytic stroke, from which, however, he recovered, and which does not appear to have at all impaired his intellectual faculties. But other maladies came thick upon him. His asthma tormented him day and night. Dropsical symptoms made their appearance. While sinking under a complication of diseases, he heard that the woman whose friendship had been the chief happiness of sixteen years of his life had married an Italian fiddler; that all London was crying shame upon her; and that the newspapers and magazines were filled with allusions to the Ephesian matron and the two pictures in Hamlet. He vehemently said that he would try to forget her existence. He never uttered her name. Every memorial of her which met his eye he flung into the fire. She meanwhile fled from the laughter and hisses of her countrymen and countrywomen to a land where she was unknown, hastened across Mont Cenis, and learned, while passing a merry Christmas of concerts and lemonade parties at Milan, that the great man with whose name hers is inseparably associated had ceased to exist.

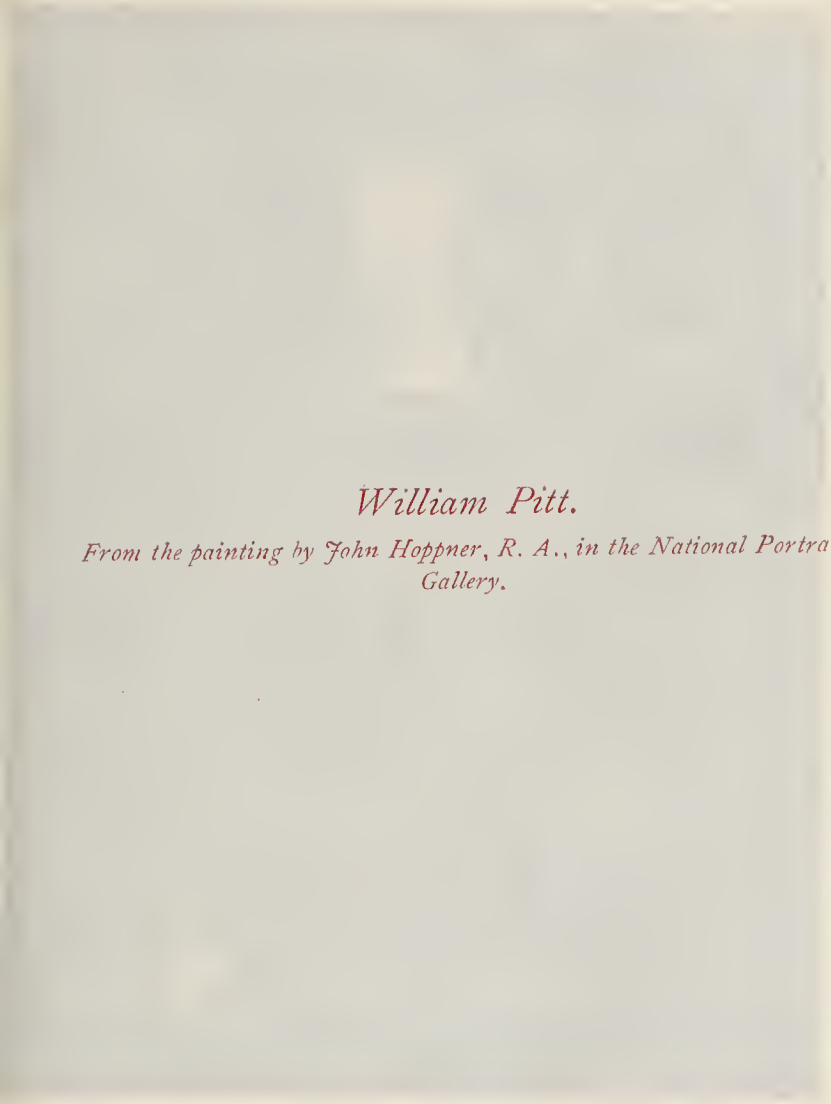
He had, in spite of much mental and much bodily affliction, clung vehemently to life. The feeling de-

scribed in that fine but gloomy paper which closes the series of his Idlers seemed to grow stronger in him as his last hour drew near. He fancied that he should be able to draw his breath more easily in a southern climate, and would probably have set out for Rome and Naples but for his fear of the expense of the journey. That expense, indeed, he had the means of defraying ; for he had laid up about two thousand pounds, the fruit of labors which had made the fortune of several publishers. But he was unwilling to break in upon this hoard ; and he seems to have wished even to keep its existence a secret. Some of his friends hoped that the government might be induced to increase his pension to six hundred pounds a year ; but this hope was disappointed, and he resolved to stand one English winter more. That winter was his last. His legs grew weaker ; his breath grew shorter ; the fatal water gathered fast, in spite of incisions which he, courageous against pain, but timid against death, urged his surgeons to make deeper and deeper. Though the tender care which had mitigated his sufferings during months of sickness at Streatham was withdrawn, he was not left desolate. The ablest physicians and surgeons attended him, and refused to accept fees from him. Burke parted from him with deep emotion. Windham sat much in the sick-room, arranged the pillows, and sent his own servant to watch a night by the bed. Frances Burney, whom the old man had cherished with fatherly kindness, stood weeping at the door ; while Langton, whose piety eminently qualified him to be an adviser and comforter at such a time, received the last pressure of his friend's hand within. When at length the moment dreaded through so many years came close,

the dark cloud passed away from Johnson's mind. His temper became unusually patient and gentle; he ceased to think with terror of death, and of that which lies beyond death ; and he spoke much of the mercy of God and of the propitiation of Christ. In this serene frame of mind he died December 13, 1784. He was laid, a week later, in Westminster Abbey, among the eminent men of whom he had been the historian—Cowley and Denham, Dryden and Congreve, Gay, Prior, and Addison. Since his death the popularity of his works—the Lives of the Poets, and, perhaps, the Vanity of Human Wishes, excepted—has greatly diminished. His Dictionary has been altered by editors till it can scarcely be called his. An allusion to his Rambler or his Idler is not readily apprehended in literary circles. The fame even of Rasselas has grown somewhat dim. But, though the celebrity of the writings may have declined, the celebrity of the writer, strange to say, is as great as ever. Boswell's book has done for him more than the best of his own books could do. The memory of other authors is kept alive by their works. But the memory of Johnson keeps many of his works alive. The old philosopher is still among us in the brown coat with the metal buttons and the shirt which ought to be at wash, blinking, puffing, rolling his head, drumming with his fingers, tearing his meat like a tiger, and swallowing his tea in oceans. No human being who has been more than seventy years in the grave is so well known to us. And it is but just to say that our intimate acquaintance with what he would himself have called the anfractuosities of his intellect and of his temper serves only to strengthen our conviction that he was both a great and a good man.

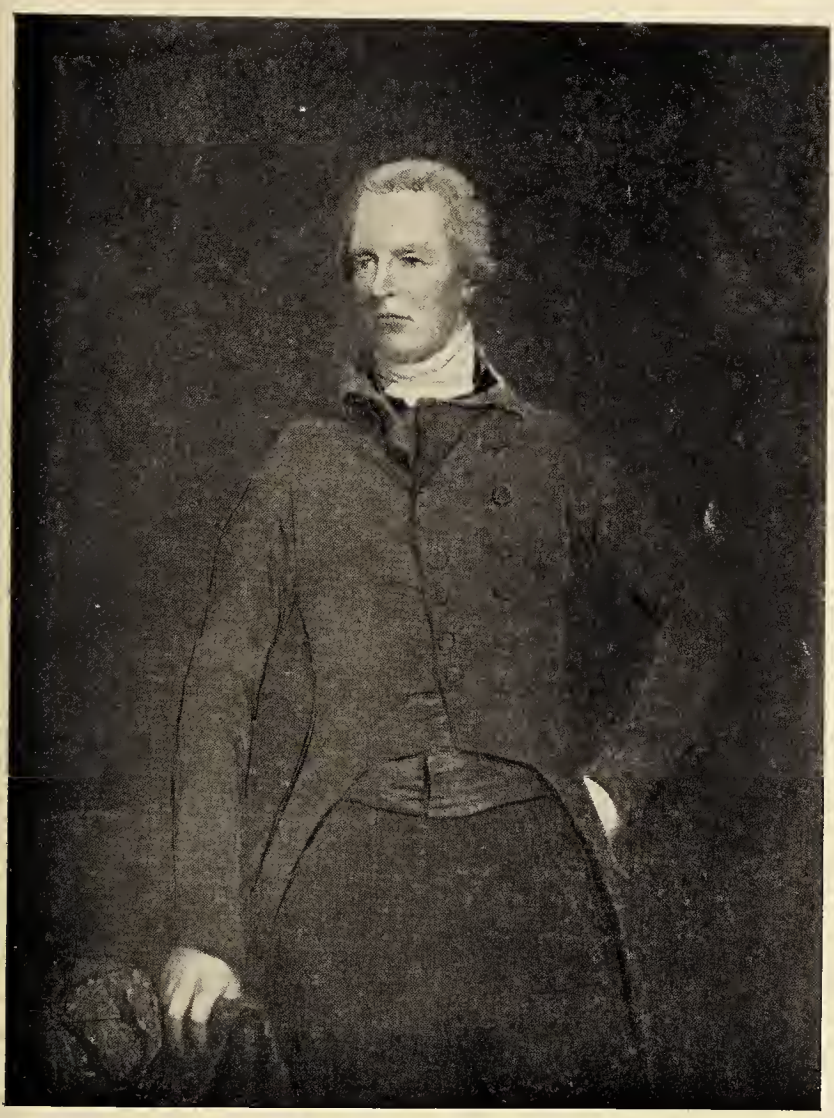
WILLIAM PITT. (JANUARY, 1859.)

WILLIAM PITT, the second son of William Pitt, Earl of Chatham, and of Lady Hester Grenville, daughter of Hester, Countess Temple, was born on the twenty-eighth of May, 1759. The child inherited a name which, at the time of his birth, was the most illustrious in the civilized world, and was pronounced by every Englishman with pride, and by every enemy of England with mingled admiration and terror. During the first year of his life, every month had its illuminations and bonfires, and every wind brought some messenger charged with joyful tidings and hostile standards. In Westphalia the English infantry won a great battle which arrested the armies of Louis the Fifteenth in the midst of a career of conquest; Boscawen defeated one French fleet on the coast of Portugal; Hawke put to flight another in the Bay of Biscay; Johnson took Niagara; Amherst took Ticonderoga; Wolfe died by the most enviable of deaths under the walls of Quebec; Clive destroyed a Dutch armament in the Hoogly, and established the English supremacy in Bengal; Coote routed Lally at Wandewash, and established the English supremacy in the Carnatic. The nation, while loudly applauding the successful warriors, considered them all, on sea and on land, in Europe, in America, and in Asia, merely as instru-



William Pitt.

From the painting by John Hoppner, R. A., in the National Portrait Gallery.



ments which received their direction from one superior mind. It was the great William Pitt, the Great Commoner, who had vanquished French marshals in Germany, and French admirals on the Atlantic; who had conquered for his country one great empire on the frozen shores of Ontario, and another under the tropical sun near the mouths of the Ganges. It was not in the nature of things that popularity such as he at this time enjoyed should be permanent. That popularity had lost its gloss before his children were old enough to understand that their father was a great man. He was at length placed in situations in which neither his talents for administration nor his talents for debate appeared to the best advantage. The energy and decision which had eminently fitted him for the direction of war were not needed in time of peace. The lofty and spirit-stirring eloquence which had made him supreme in the House of Commons often fell dead on the House of Lords. A cruel malady racked his joints, and left his joints only to fall on his nerves and on his brain. During the closing years of his life, he was odious to the court, and yet was not on cordial terms with the great body of the Opposition. Chatham was only the ruin of Pitt, but an awful and majestic ruin, not to be contemplated by any man of sense and feeling without emotions resembling those which are excited by the remains of the Parthenon and of the Coliseum. In one respect the old statesman was eminently happy. Whatever might be the vicissitudes of his public life, he never failed to find peace and love by his own hearth. He loved all his children, and was loved by them; and, of all his children, the one of whom he was fondest and proudest was his second son.

The child's genius and ambition displayed themselves with a rare and almost unnatural precocity. At seven, the interest which he took in grave subjects, the ardor with which he pursued his studies, and the sense and vivacity of his remarks on books and on events amazed his parents and instructors. One of his sayings of this date was reported to his mother by his tutor. In August, 1766, when the world was agitated by the news that Mr. Pitt had become Earl of Chatham, little William exclaimed, "I am glad that I am not the eldest son. I want to speak in the House of Commons like papa." A letter is extant in which Lady Chatham, a woman of considerable abilities, remarked to her lord that their younger son at twelve had left far behind him his elder brother, who was fifteen. "The fineness," she wrote, "of William's mind makes him enjoy with the greatest pleasure what would be above the reach of any other creature of his small age." At fourteen the lad was in intellect a man. Hayley, who met him at Lyme in the summer of 1773, was astonished, delighted, and somewhat overawed by hearing wit and wisdom from so young a mouth. The poet, indeed, was afterwards sorry that his shyness had prevented him from submitting the plan of an extensive literary work, which he was then meditating, to the judgment of this extraordinary boy. The boy, indeed, had already written a tragedy—bad, of course, but not worse than the tragedies of his friend. This piece is still preserved at Chevening, and is in some respects highly curious. There is no love. The whole plot is political; and it is remarkable that the interest, such as it is, turns on a contest about a regency. On one side is a faithful servant of the Crown, on the other an

ambitious and unprincipled conspirator. At length the King, who had been missing, reappears, resumes his power, and rewards the faithful defender of his rights. A reader who should judge only by internal evidence would have no hesitation in pronouncing that the play was written by some Pittite poetaster at the time of the rejoicings for the recovery of George the Third, in 1789.

The pleasure with which William's parents observed the rapid development of his intellectual powers was alloyed by apprehensions about his health. He shot up alarmingly fast; he was often ill, and always weak; and it was feared that it would be impossible to rear a stripling so tall, so slender, and so feeble. Port-wine was prescribed by his medical advisers; and it is said that he was, at fourteen, accustomed to take this agreeable physic in quantities which would, in our abstemious age, be thought much more than sufficient for any full-grown man. This regimen, though it would probably have killed ninety-nine boys out of a hundred, seems to have been well suited to the peculiarities of William's constitution; for at fifteen he ceased to be molested by disease, and, though never a strong man, continued, during many years of labor and anxiety, of nights passed in debate and of summers passed in London, to be a tolerably healthy one. It was probably on account of the delicacy of his frame that he was not educated like other boys of the same rank. Almost all the eminent English statesmen and orators to whom he was afterwards opposed or allied—North, Fox, Shelburne, Windham, Grey, Wellesley, Grenville, Sheridan, Canning—went through the training of great public schools. Lord Chatham had himself been a distinguished Etonian; and it is seldom that a distinguished

Etonian forgets his obligations to Eton. But William's infirmities required a vigilance and tenderness such as could be found only at home. He was therefore bred under the paternal roof. His studies were superintended by a clergyman named Wilson; and those studies, though often interrupted by illness, were prosecuted with extraordinary success. Before the lad had completed his fifteenth year, his knowledge both of the ancient languages and of mathematics was such as very few men of eighteen then carried up to college. He was therefore sent, towards the close of the year 1773, to Pembroke Hall, in the University of Cambridge. So young a student required much more than the ordinary care which a college tutor bestows on undergraduates. The governor to whom the direction of William's academical life was confided was a Bachelor of Arts named Pretyman, who had been senior wrangler in the preceding year, and who, though not a man of prepossessing appearance or brilliant parts, was eminently acute and laborious, a sound scholar, and an excellent geometrician. At Cambridge, Pretyman was, during more than two years, the inseparable companion, and, indeed, almost the only companion, of his pupil. A close and lasting friendship sprang up between the pair. The disciple was able, before he completed his twenty-eighth year, to make his preceptor Bishop of Lincoln and Dean of St. Paul's; and the preceptor showed his gratitude by writing a life of the disciple, which enjoys the distinction of being the worst biographical work of its size in the world.

Pitt, till he graduated, had scarcely one acquaintance, attended chapel regularly morning and evening, dined

every day in hall, and never went to a single evening party. At seventeen, he was admitted, after the bad fashion of those times, by right of birth, without any examination, to the degree of Master of Arts. But he continued during some years to reside at college, and to apply himself vigorously, under Pretyman's direction, to the studies of the place, while mixing freely in the best academic society.

The stock of learning which Pitt laid in during this part of his life was certainly very extraordinary. In fact, it was all that he ever possessed ; for he very early became too busy to have any spare time for books. The work in which he took the greatest delight was Newton's Principia. His liking for mathematics, indeed, amounted to a passion, which, in the opinion of his instructors, themselves distinguished mathematicians, required to be checked rather than encouraged. The acuteness and readiness with which he solved problems was pronounced by one of the ablest of the moderators, who in those days presided over the disputations in the schools and conducted the examinations in the Senate-house, to be unrivalled in the university. Nor was the youth's proficiency in classical learning less remarkable. In one respect, indeed, he appeared to disadvantage when compared with even second-rate and third-rate men from public schools. He had never, while under Wilson's care, been in the habit of composing in the ancient languages ; and he therefore never acquired that knack of versification which is sometimes possessed by clever boys whose knowledge of the language and literature of Greece and Rome is very superficial. It would have been utterly out of his power to produce such charming elegiac lines as

those in which Wellesley bade farewell to Eton, or such Virgilian hexameters as those in which Canning described the pilgrimage to Mecca. But it may be doubted whether any scholar has ever, at twenty, had a more solid and profound knowledge of the two great tongues of the old civilized world. The facility with which he penetrated the meaning of the most intricate sentences in the Attic writers astonished veteran critics. He had set his heart on being intimately acquainted with all the extant poetry of Greece, and was not satisfied till he had mastered Lycophron's Cassandra, the most obscure work in the whole range of ancient literature. This strange rhapsody, the difficulties of which have perplexed and repelled many excellent scholars, "he read," says his preceptor, "with an ease at first sight which, if I had not witnessed it, I should have thought beyond the compass of human intellect."

To modern literature Pitt paid comparatively little attention. He knew no living language except French: and French he knew very imperfectly. With a few of the best English writers he was intimate, particularly with Shakspeare and Milton. The debate in Pandemonium was, as it well deserved to be, one of his favorite passages; and his early friends used to talk, long after his death, of the just emphasis and the melodious cadence with which they had heard him recite the incomparable speech of Belial. He had, indeed, been carefully trained from infancy in the art of managing his voice, a voice naturally clear and deep-toned. His father, whose oratory owed no small part of its effect to that art, had been a most skilful and judicious instructor. At a later period, the wits of Brookes's, irritated by observing, night after night,

how powerfully Pitt's sonorous elocution fascinated the rows of country gentlemen, reproached him with having been "taught by his dad on a stool."

His education, indeed, was well adapted to form a great parliamentary speaker. One argument often urged against those classical studies which occupy so large a part of the early life of every gentleman bred in the South of our island is, that they prevent him from acquiring a command of his mother tongue, and that it is not unusual to meet with a youth of excellent parts who writes Ciceronian Latin prose and Horatian Latin Alcaics, but who would find it impossible to express his thoughts in pure, perspicuous, and forcible English. There may, perhaps, be some truth in this observation. But the classical studies of Pitt were carried on in a peculiar manner, and had the effect of enriching his English vocabulary, and of making him wonderfully expert in the art of constructing correct English sentences. His practice was to look over a page or two of a Greek or Latin author, to make himself master of the meaning, and then to read the passage straightforward into his own language. This practice, begun under his first teacher, Wilson, was continued under Pretyman. It is not strange that a young man of great abilities, who had been exercised daily in this way during ten years, should have acquired an almost unrivalled power of putting his thoughts, without premeditation, into words well selected and well arranged.

Of all the remains of antiquity, the orations were those on which he bestowed the most minute examination. His favorite employment was to compare harangues on opposite sides of the same question, to

analyze them, and to observe which of the arguments of the first speaker were refuted by the second, which were evaded, and which were left untouched. Nor was it only in books that he at this time studied the art of parliamentary fencing. When he was at home, he had frequent opportunities of hearing important debates at Westminster ; and he heard them, not only with interest and enjoyment, but with a close scientific attention resembling that with which a diligent pupil at Guy's Hospital watches every turn of the hand of a great surgeon through a difficult operation. On one of these occasions, Pitt, a youth whose abilities were as yet known only to his own family and to a small knot of college friends, was introduced on the steps of the throne in the House of Lords to Fox, who was his senior by eleven years, and who was already the greatest debater, and one of the greatest orators, that had appeared in England. Fox used afterwards to relate that, as the discussion proceeded, Pitt repeatedly turned to him, and said, " But surely, Mr. Fox, that might be met thus ; " or, " Yes, but he lays himself open to this retort." What the particular criticisms were Fox had forgotten ; but he said that he was much struck at the time by the precocity of a lad who, through the whole sitting, seemed to be thinking only how all the speeches on both sides could be answered.

One of the young man's visits to the House of Lords was a sad and memorable era in his life. He had not quite completed his nineteenth year, when, on the seventh of April, 1778, he attended his father to Westminster. A great debate was expected. It was known that France had recognized the independence of the United States. The Duke of Richmond was about to

declare his opinion that all thought of subjugating those states ought to be relinquished. Chatham had always maintained that the resistance of the colonies to the mother country was justifiable. But he conceived, very erroneously, that on the day on which their independence should be acknowledged the greatness of England would be at an end. Though sinking under the weight of years and infirmities, he determined, in spite of the entreaties of his family, to be in his place. His son supported him to a seat. The excitement and exertion were too much for the old man. In the very act of addressing the Peers, he fell back in convulsions. A few weeks later his corpse was borne, with gloomy pomp, from the Painted Chamber to the Abbey. The favorite child and namesake of the deceased statesman followed the coffin as chief mourner, and saw it deposited in the transept where his own was destined to lie.

His elder brother, now Earl of Chatham, had means sufficient, and barely sufficient, to support the dignity of the peerage. The other members of the family were poorly provided for. William had little more than three hundred a year. It was necessary for him to follow a profession. He had already begun to eat his terms. In the spring of 1780 he came of age. He then quitted Cambridge, was called to the bar, took chambers in Lincoln's Inn, and joined the Western circuit. In the autumn of that year a general election took place, and he offered himself as a candidate for the university; but he was at the bottom of the poll. It is said that the grave doctors who then sat, robed in scarlet, on the benches of Golgotha thought it great presumption in so young a man to solicit so high a distinction. He

was, however, at the request of an hereditary friend, the Duke of Rutland, brought into Parliament by Sir James Lowther for the borough of Appleby.

The dangers of the country were at that time such as might well have disturbed even a constant mind. Army after army had been sent in vain against the rebellious colonists of North America. On pitched fields of battle the advantage had been with the disciplined troops of the mother country. But it was not on pitched fields of battle that the event of such a contest could be decided. An armed nation, with hunger and the Atlantic for auxiliaries, was not to be subjugated. Meanwhile the House of Bourbon, humbled to the dust a few years before by the genius and vigor of Chatham, had seized the opportunity of revenge. France and Spain were united against us, and had recently been joined by Holland. The command of the Mediterranean had been for a time lost. The British flag had been scarcely able to maintain itself in the British Channel. The Northern powers professed neutrality; but their neutrality had a menacing aspect. In the East, Hyder had descended on the Carnatic, had destroyed the little army of Baillie, and had spread terror even to the ramparts of Fort St. George. The discontents of Ireland threatened nothing less than civil war. In England the authority of the government had sunk to the lowest point. The King and the House of Commons were alike unpopular. The cry for parliamentary reform was scarcely less loud and vehement than in the autumn of 1830. Formidable associations, headed, not by ordinary demagogues, but by men of high rank, stainless character, and distinguished ability, demanded a revision of the representative system. The populace, emboldened by

the impotence and irresolution of the government, had recently broken loose from all restraint, besieged the chambers of the Legislature, hustled peers, hunted bishops, attacked the residences of ambassadors, opened prisons, burned and pulled down houses. London had presented during some days the aspect of a city taken by storm ; and it had been necessary to form a camp among the trees of St. James's Park.

In spite of dangers and difficulties abroad and at home, George the Third, with a firmness which had little affinity with virtue or with wisdom, persisted in his determination to put down the American rebels by force of arms ; and his ministers submitted their judgment to his. Some of them were probably actuated merely by selfish cupidity; but their chief, Lord North, a man of high honor, amiable temper, winning manners, lively wit, and excellent talents both for business and for debate, must be acquitted of all sordid motives. He remained at a post from which he had long wished and had repeatedly tried to escape, only because he had not sufficient fortitude to resist the entreaties and reproaches of the King, who silenced all arguments by passionately asking whether any gentleman, any man of spirit, could have the heart to desert a kind master in the hour of extremity.

The Opposition consisted of two parties which had once been hostile to each other, and which had been very slowly, and, as it soon appeared, very imperfectly reconciled, but which at this conjuncture seemed to act together with cordiality. The larger of these parties consisted of the great body of the Whig aristocracy. Its head was Charles, Marquess of Rockingham, a man of sense and virtue, and in wealth and

parliamentary interest equalled by very few of the English nobles, but afflicted with a nervous timidity which prevented him from taking a prominent part in debate. In the House of Commons, the adherents of Rockingham were led by Fox, whose dissipated habits and ruined fortunes were the talk of the whole town, but whose commanding genius, and whose sweet, generous, and affectionate disposition, extorted the admiration and love of those who most lamented the errors of his private life. Burke, superior to Fox in largeness of comprehension, in extent of knowledge, and in splendor of imagination, but less skilled in that kind of logic and in that kind of rhetoric which convince and persuade great assemblies, was willing to be the lieutenant of a young chief who might have been his son.

A smaller section of the Opposition was composed of the old followers of Chatham. At their head was William, Earl of Shelburne, distinguished both as a statesman and as a lover of science and letters. With him were leagued Lord Camden, who had formerly held the Great Seal, and whose integrity, ability, and constitutional knowledge commanded the public respect; Barré, an eloquent and acrimonious declaimer ; and Dunning, who had long held the first place at the English bar. It was to this party that Pitt was naturally attracted.

On the twenty-sixth of February, 1781, he made his first speech, in favor of Burke's plan of economical reform. Fox stood up at the same moment, but instantly gave way. The lofty yet animated deportment of the young member, his perfect self-possession, the readiness with which he replied to the orators who had preceded him, the silver tones of his voice, the perfect structure of his unpremeditated sentences, astonished

and delighted his hearers. Burke, moved even to tears, exclaimed, "It is not a chip of the old block; it is the old block itself." "Pitt will be one of the first men in Parliament," said a member of the Opposition to Fox. "He is so already," answered Fox, in whose nature envy had no place. It is a curious fact, well remembered by some who were very recently living, that soon after this debate Pitt's name was put up by Fox at Brookes's.

On two subsequent occasions during that session Pitt addressed the House, and on both fully sustained the reputation which he had acquired on his first appearance. In the summer, after the prorogation, he again went the Western circuit, held several briefs, and acquitted himself in such a manner that he was highly complimented by Buller from the bench, and by Dunning at the bar.

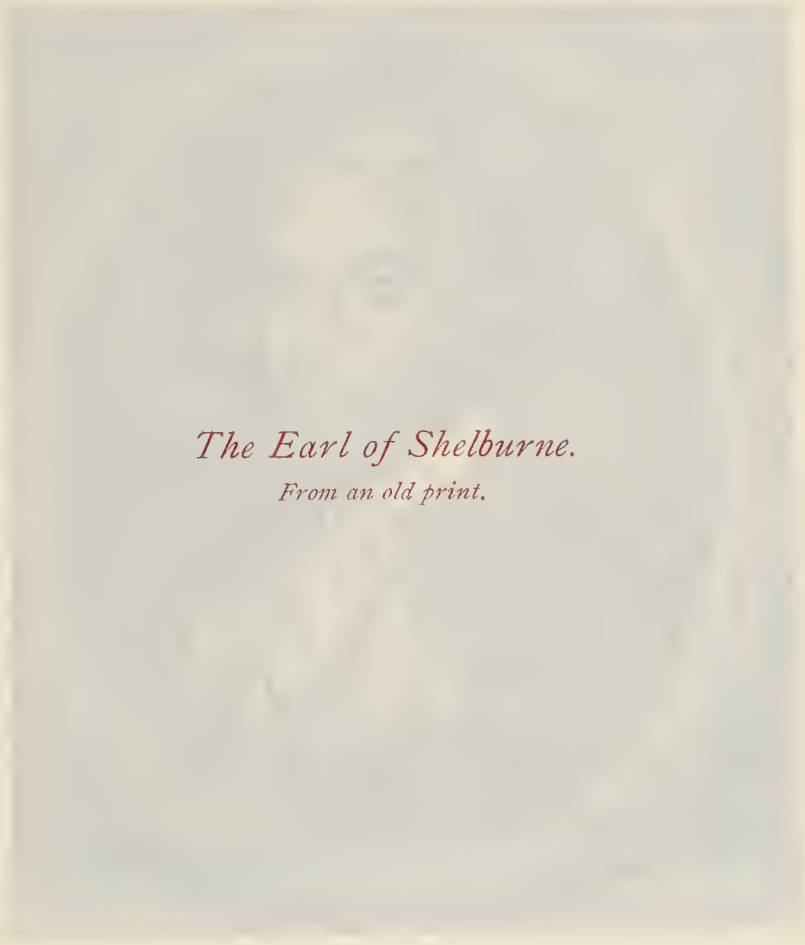
On the twenty-seventh of November the Parliament reassembled. Only forty-eight hours before had arrived tidings of the surrender of Cornwallis and his army; and it had consequently been necessary to rewrite the royal speech. Every man in the kingdom except the King was now convinced that it was mere madness to think of conquering the United States. In the debate on the report of the address, Pitt spoke with even more energy and brilliancy than on any former occasion. He was warmly applauded by his allies; but it was remarked that no person on his own side of the house was so loud in eulogy as Henry Dundas, the Lord Advocate of Scotland, who spoke from the ministerial ranks. That able and versatile politician distinctly foresaw the downfall of the government with which he was connected, and was preparing to make his own

escape from the ruin. From that night dates his connection with Pitt—a connection which soon became a close intimacy, and which lasted till it was dissolved by death.

About a fortnight later, Pitt spoke in the Committee of Supply on the army estimates. Symptoms of dissension had begun to appear on the Treasury bench. Lord George Germaine, the Secretary of State, who was especially charged with the direction of the war in America, had held language not easily to be reconciled with declarations made by the First Lord of the Treasury. Pitt noticed the discrepancy with much force and keenness. Lord George and Lord North began to whisper together ; and Welbore Ellis, an ancient placeman who had been drawing salary almost every quarter since the days of Henry Pelham, bent down between them to put in a word. Such interruptions sometimes discompose veteran speakers. Pitt stopped, and, looking at the group, said, with admirable readiness, " I shall wait till Nestor has composed the dispute between Agamemnon and Achilles."

After several defeats, or victories hardly to be distinguished from defeats, the ministry resigned. The King, reluctantly and ungraciously, consented to accept Rockingham as First Minister. Fox and Shelburne became Secretaries of State. Lord John Cavendish, one of the most upright and honorable of men, was made Chancellor of the Exchequer. Thurlow, whose abilities and force of character had made him the dictator of the House of Lords, continued to hold the Great Seal.

To Pitt was offered, through Shelburne, the Vice-treasurership of Ireland, one of the easiest and most



The Earl of Shelburne.

From an old print.

highly paid places in the gift of the Crown ; but the offer was, without hesitation, declined. The young statesman had resolved to accept no post which did not entitle him to a seat in the cabinet, and, a few days later, he announced that resolution in the House of Commons. It must be remembered that the cabinet was then a much smaller and more select body than at present. We have seen cabinets of sixteen. In the time of our grandfathers a cabinet of ten or eleven was thought inconveniently large. Seven was a usual number. Even Burke, who held the lucrative office of paymaster, was not in the cabinet. Many, therefore, thought Pitt's declaration indecent. He himself was sorry that he had made it. The words, he said in private, had escaped him in the heat of speaking ; and he had no sooner uttered them than he would have given the world to recall them. They, however, did him no harm with the public. The second William Pitt, it was said, had shown that he had inherited the spirit as well as the genius of the first. In the son, as in the father, there might, perhaps, be too much pride ; but there was nothing low or sordid. It might be called arrogance in a young barrister, living in chambers on three hundred a year, to refuse a salary of five thousand a year, merely because he did not choose to bind himself to speak or vote for plans which he had no share in framing ; but surely such arrogance was not very far removed from virtue.

Pitt gave a general support to the administration of Rockingham, but omitted, in the meantime, no opportunity of courting that ultra-Whig party which the persecution of Wilkes and the Middlesex election had called into existence, and which the disastrous events

of the war and the triumph of republican principles in America had made formidable both in numbers and in temper. He supported a motion for shortening the duration of parliaments. He made a motion for a committee to examine into the state of the representation, and, in the speech by which that motion was introduced, avowed himself the enemy of the close boroughs, the strongholds of that corruption to which he attributed all the calamities of the nation, and which, as he phrased it in one of those exact and sonorous sentences of which he had a boundless command, had grown with the growth of England and strengthened with her strength, but had not diminished with her diminution or decayed with her decay. On this occasion he was supported by Fox. The motion was lost by only twenty votes in a house of more than three hundred members. The reformers never again had so good a division till the year 1831.

The new administration was strong in abilities, and was more popular than any administration which had held office since the first year of George the Third, but was hated by the King, hesitatingly supported by the Parliament, and torn by internal dissensions. The Chancellor was disliked and distrusted by almost all his colleagues. The two Secretaries of State regarded each other with no friendly feeling. The line between their departments had not been traced with precision ; and there were consequently jealousies, encroachments, and complaints. It was all that Rockingham could do to keep the peace in his cabinet; and, before the cabinet had existed three months, Rockingham died.

In an instant all was confusion. The adherents of the deceased statesman looked on the Duke of Portland

as their chief. The King placed Shelburne at the head of the Treasury. Fox, Lord John Cavendish, and Burke immediately resigned their offices ; and the new Prime-minister was left to constitute a government out of very defective materials. His own parliamentary talents were great ; but he could not be in the place where parliamentary talents were most needed. It was necessary to find some member of the House of Commons who could confront the great orators of the Opposition ; and Pitt alone had the eloquence and the courage which were required. He was offered the great place of Chancellor of the Exchequer ; and he accepted it. He had scarcely completed his twenty-third year.

The Parliament was speedily prorogued. During the recess, a negotiation for peace which had been commenced under Rockingham was brought to a successful termination. England acknowledged the independence of her revolted colonies ; and she ceded to her European enemies some places in the Mediterranean and in the Gulf of Mexico. But the terms which she obtained were quite as advantageous and honorable as the events of the war entitled her to expect, or as she was likely to obtain by persevering in a contest against immense odds. All her vital parts, all the real sources of her power, remained uninjured. She preserved even her dignity ; for she ceded to the House of Bourbon only part of what she had won from that house in previous wars. She retained her Indian empire undiminished ; and, in spite of the mightiest efforts of two great monarchies, her flag still waved on the rock of Gibraltar. There is not the slightest reason to believe that Fox, if he had remained in office, would have hesitated one

moment about concluding a treaty on such conditions. Unhappily that great and most amiable man was, at this crisis, hurried by his passions into an error which made his genius and his virtues, during a long course of years, almost useless to his country.

He saw that the great body of the House of Commons was divided into three parties—his own, that of North, and that of Shelburne ; that none of those three parties was large enough to stand alone ; that, therefore, unless two of them united, there must be a miserably feeble administration ; or, more probably, a rapid succession of miserably feeble administrations, and this at a time when a strong government was essential to the prosperity and respectability of the nation. It was then necessary and right that there should be a coalition. To every possible coalition there were objections. But, of all possible coalitions, that to which there were the fewest objections was undoubtedly a coalition between Shelburne and Fox. It would have been generally applauded by the followers of both. It might have been made without any sacrifice of public principle on the part of either. Unhappily, recent bickerings had left in the mind of Fox a profound dislike and distrust of Shelburne. Pitt attempted to mediate, and was authorized to invite Fox to return to the service of the Crown. "Is Lord Shelburne," said Fox, "to remain Prime-minister?" Pitt answered in the affirmative. "It is impossible that I can act under him," said Fox. "Then negotiation is at an end," said Pitt ; "for I cannot betray him." Thus the two statesmen parted. They were never again in a private room together.

As Fox and his friends would not treat with Shelburne, nothing remained to them but to treat with

North. That fatal coalition which is emphatically called "The Coalition" was formed. Not three quarters of a year had elapsed since Fox and Burke had threatened North with impeachment, and had described him, night after night, as the most arbitrary, the most corrupt, the most incapable of ministers. They now allied themselves with him for the purpose of driving from office a statesman with whom they cannot be said to have differed as to any important question. Nor had they even the prudence and the patience to wait for some occasion on which they might, without inconsistency, have combined with their old enemies in opposition to the government. That nothing might be wanting to the scandal, the great orators who had, during seven years, thundered against the war determined to join with the authors of that war in passing a vote of censure on the peace.

The Parliament met before Christmas, 1782. But it was not till January, 1783, that the preliminary treaties were signed. On the seventeenth of February they were taken into consideration by the House of Commons. There had been, during some days, floating rumors that Fox and North had coalesced; and the debate indicated but too clearly that those rumors were not unfounded. Pitt was suffering from indisposition. He did not rise till his own strength and that of his hearers were exhausted; and he was, consequently, less successful than on any former occasion. His admirers owned that his speech was feeble and petulant. He so far forgot himself as to advise Sheridan to confine himself to amusing theatrical audiences. This ignoble sarcasm gave Sheridan an opportunity of retorting with great felicity. "After what I have seen and heard to-

night," he said, " I really feel strongly tempted to venture on a competition with so great an artist as Ben Jonson, and to bring on the stage a second Angry Boy." On a division, the address proposed by the supporters of the government was rejected by a majority of sixteen.

But Pitt was not a man to be disheartened by a single failure, or to be put down by the most lively repartee. When, a few days later, the Opposition proposed a resolution directly censuring the treaties, he spoke with an eloquence, energy, and dignity which raised his fame and popularity higher than ever. To the coalition of Fox and North he alluded in language which drew forth tumultuous applause from his followers. " If," he said, " this ill-omened and unnatural marriage be not yet consummated, I know of a just and lawful impediment ; and, in the name of the public weal, I forbid the banns."

The ministers were again left in a minority ; and Shelburne consequently tendered his resignation. It was accepted ; but the King struggled long and hard before he submitted to the terms dictated by Fox, whose faults he detested, and whose high spirit and powerful intellect he detested still more. The first place at the Board of Treasury was repeatedly offered to Pitt; but the offer, though tempting, was steadfastly declined. The young man, whose judgment was as precocious as his eloquence, saw that his time was coming, but was not come, and was deaf to royal importunities and reproaches. His Majesty, bitterly complaining of Pitt's faintheartedness, tried to break the coalition. Every art of seduction was practised on North, but in vain. During several weeks the country

remained without a government. It was not till all devices had failed, and till the aspect of the House of Commons became threatening, that the King gave way. The Duke of Portland was declared First Lord of the Treasury. Thurlow was dismissed. Fox and North became Secretaries of State, with power ostensibly equal. But Fox was the real Prime-minister.

The year was far advanced before the new arrangements were completed; and nothing very important was done during the remainder of the session. Pitt, now seated on the Opposition bench, brought the question of parliamentary reform a second time under the consideration of the Commons. He proposed to add to the House at once a hundred county members and several members for metropolitan districts, and to enact that every borough of which an election committee should report that the majority of voters appeared to be corrupt should lose the franchise. The motion was rejected by 293 votes to 149.

After the prorogation, Pitt visited the Continent for the first and last time. His travelling companion was one of his most intimate friends, a young man of his own age, who had already distinguished himself in Parliament by an engaging natural eloquence, set off by the sweetest and most exquisitely modulated of human voices, and whose affectionate heart, caressing manners, and brilliant wit made him the most delightful of companions—William Wilberforce. That was the time of Anglomania in France; and at Paris the son of the great Chatham was absolutely hunted by men of letters and women of fashion, and forced, much against his will, into political disputation. One remarkable saying which dropped from him during his

tour has been preserved. A French gentleman expressed some surprise at the immense influence which Fox, a man of pleasure, ruined by the dice-box and the turf, exercised over the English nation. "You have not," said Pitt, "been under the wand of the magician."

In November, 1783, the Parliament met again. The government had irresistible strength in the House of Commons, and seemed to be scarcely less strong in the House of Lords; but was, in truth, surrounded on every side by dangers. The King was impatiently waiting for the moment at which he could emancipate himself from a yoke which galled him so severely that he had more than once seriously thought of retiring to Hanover; and the King was scarcely more eager for a change than the nation. Fox and North had committed a fatal error. They ought to have known that coalitions between parties which have long been hostile can succeed only when the wish for coalition pervades the lower ranks of both. If the leaders unite before there is any disposition to union among the followers, the probability is that there will be a mutiny in both camps, and that the two revolted armies will make a truce with each other, in order to be revenged on those by whom they think that they have been betrayed. Thus it was in 1783. At the beginning of that eventful year, North had been the recognized head of the old Tory party, which, though for a moment prostrated by the disastrous issue of the American war, was still a great power in the State. To him the clergy, the universities, and that large body of country gentlemen whose rallying-cry was "Church and King" had long looked up with respect and confidence. Fox had, on the other hand, been the idol of the Whigs and of the

whole body of Protestant Dissenters. The coalition at once alienated the most zealous Tories from North, and the most zealous Whigs from Fox. The University of Oxford, which had marked its approbation of North's orthodoxy by electing him Chancellor, the city of London, which had been during two-and-twenty years at war with the court, were equally disgusted. Squires and rectors who had inherited the principles of the Cavaliers of the preceding century could not forgive their old leader for combining with disloyal subjects in order to put a force on the sovereign. The members of the Bill of Rights Society and of the Reform Associations were enraged by learning that their favorite orator now called the great champion of tyranny and corruption his noble friend. Two great multitudes were at once left without any head, and both at once turned their eyes on Pitt. One party saw in him the only man who could rescue the King ; the other saw in him the only man who could purify the Parliament. He was supported on one side by Archbishop Markham, the preacher of divine right, and by Jenkinson, the captain of the Prætorian band of the King's friends ; on the other side by Jebb and Priestley, Sawbridge and Cartwright, Jack Wilkes and Horne Tooke. On the benches of the House of Commons, however, the ranks of the ministerial majority were unbroken ; and that any statesman would venture to brave such a majority was thought impossible. No prince of the Hanoverian line had ever, under any provocation, ventured to appeal from the representative body to the constituent body. The ministers, therefore, notwithstanding the sullen looks and muttered words of displeasure with which their suggestions were received in the closet,

notwithstanding the roar of obloquy which was rising louder and louder every day from every corner of the island, thought themselves secure.

Such was their confidence in their strength that, as soon as the Parliament had met, they brought forward a singularly bold and original plan for the government of the British territories in India. What was proposed was that the whole authority, which till that time had been exercised over those territories by the East India Company, should be transferred to seven commissioners who were to be named by Parliament, and were not to be removable at the pleasure of the Crown. Earl Fitzwilliam, the most intimate friend of Fox, was to be chairman of this board ; and the eldest son of North was to be one of the members.

As soon as the outlines of the scheme were known, all the hatred which the coalition had excited burst forth with an astounding explosion. The question which ought undoubtedly to have been considered as paramount to every other was whether the proposed change was likely to be beneficial or injurious to the thirty millions of people who were subject to the Company. But that question cannot be said to have been even seriously discussed. Burke, who, whether right or wrong in the conclusions to which he came, had at least the merit of looking at the subject in the right point of view, vainly reminded his hearers of that mighty population whose daily rice might depend on a vote of the British Parliament. He spoke, with even more than his wonted power of thought and language, about the desolation of Rohilcund, about the spoliation of Benares, about the evil policy which had suffered the tanks of the Carnatic to go to ruin ; but he could

scarcely obtain a hearing. The contending parties, to their shame it must be said, would listen to none but English topics. Out-of-doors the cry against the ministry was almost universal. Town and country were united. Corporations exclaimed against the violation of the charter of the greatest corporation in the realm. Tories and democrats joined in pronouncing the proposed board an unconstitutional body. It was to consist of Fox's nominees. The effect of his bill was to give, not to the Crown, but to him personally, whether in office or in opposition, an enormous power, a patronage sufficient to counterbalance the patronage of the Treasury and of the Admiralty, and to decide the elections for fifty boroughs. He knew, it was said, that he was hateful alike to King and people ; and he had devised a plan which would make him independent of both. Some nicknamed him Cromwell, and some Carlo Khan. Wilberforce, with his usual felicity of expression, and with very unusual bitterness of feeling, described the scheme as the genuine offspring of the coalition, as marked with the features of both its parents, the corruption of one and the violence of the other. In spite of all opposition, however, the bill was supported in every stage by great majorities, was rapidly passed, and was sent up to the Lords. To the general astonishment, when the second reading was moved in the Upper House, the Opposition proposed an adjournment, and carried it by eighty-seven votes to seventy-nine. The cause of this strange turn of fortune was soon known. Pitt's cousin, Earl Temple, had been in the royal closet, and had there been authorized to let it be known that his Majesty would consider all who voted for the bill as his enemies. The

ignominious commission was performed ; and instantly a troop of lords of the bedchamber, of bishops who wished to be translated, and of Scotch peers who wished to be re-elected made haste to change sides. On a later day the Lords rejected the bill. Fox and North were immediately directed to send their seals to the palace by their undersecretaries, and Pitt was appointed First Lord of the Treasury and Chancellor of the Exchequer.

The general opinion was that there would be an immediate dissolution. But Pitt wisely determined to give the public feeling time to gather strength. On this point he differed from his kinsman Temple. The consequence was that Temple, who had been appointed one of the Secretaries of State, resigned his office forty-eight hours after he had accepted it, and thus relieved the new government from a great load of unpopularity; for all men of sense and honor, however strong might be their dislike of the India Bill, disapproved of the manner in which that bill had been thrown out. Temple carried away with him the scandal which the best friends of the new government could not but lament. The fame of the young Prime-minister preserved its whiteness. He could declare with perfect truth that, if unconstitutional machinations had been employed, he had been no party to them.

He was, however, surrounded by difficulties and dangers. In the House of Lords, indeed, he had a majority; nor could any orator of the Opposition in that assembly be considered as a match for Thurlow, who was now again Chancellor, or for Camden, who cordially supported the son of his old friend Chatham. But in the other House there was not a single eminent speaker

among the official men who sat round Pitt. His most useful assistant was Dundas, who, though he had not eloquence, had sense, knowledge, readiness, and boldness. On the opposite benches was a powerful majority, led by Fox, who was supported by Burke, North, and Sheridan. The heart of the young Minister, stout as it was, almost died within him. He could not once close his eyes on the night which followed Temple's resignation. But, whatever his internal emotions might be, his language and deportment indicated nothing but unconquerable firmness and haughty confidence in his own powers. His contest against the House of Commons lasted from the seventeenth of December, 1783, to the eighth of March, 1784. In sixteen divisions the Opposition triumphed. Again and again the King was requested to dismiss his ministers. But he was determined to go to Germany rather than yield. Pitt's resolution never wavered. The cry of the nation in his favor became vehement and almost furious. Addresses assuring him of public support came up daily from every part of the kingdom. The freedom of the city of London was presented to him in a gold box. He went in state to receive this mark of distinction. He was sumptuously feasted in Grocers' Hall ; and the shopkeepers of the Strand and Fleet Street illuminated their houses in his honor. These things could not but produce an effect within the walls of Parliament. The ranks of the majority began to waver ; a few passed over to the enemy; some skulked away ; many were for capitulating while it was still possible to capitulate with the honors of war. Negotiations were opened with the view of forming an administration on a wide basis ; but they had scarcely been

opened when they were closed. The Opposition demanded, as a preliminary article of the treaty, that Pitt should resign the Treasury; and with this demand Pitt steadfastly refused to comply. While the contest was raging, the Clerkship of the Pells, a sinecure place for life, worth three thousand a year, and tenable with a seat in the House of Commons, became vacant. The appointment was with the Chancellor of the Exchequer. Nobody doubted that he would appoint himself; and nobody could have blamed him if he had done so; for such sinecure offices had always been defended on the ground that they enabled a few men of eminent abilities and small incomes to live without any profession, and to devote themselves to the service of the State. Pitt, in spite of the remonstrances of his friends, gave the Pells to his father's old adherent Colonel Barré, a man distinguished by talent and eloquence, but poor, and afflicted with blindness. By this arrangement a pension which the Rockingham administration had granted to Barré was saved to the public. Never was there a happier stroke of policy. About treaties, wars, expeditions, tariffs, budgets, there will always be room for dispute. The policy which is applauded by half the nation may be condemned by the other half. But pecuniary disinterestedness everybody comprehends. It is a great thing for a man who has only three hundred a year to be able to show that he considers three thousand a year as mere dirt beneath his feet when compared with the public interest and the public esteem. Pitt had his reward. No minister was ever more rancorously libelled; but, even when he was known to be overwhelmed with debt, when millions were passing through his hands, when the wealthiest

magnates of the realm were soliciting him for marquisates and garters, his bitterest enemies did not dare to accuse him of touching unlawful gain.

At length the hard-fought fight ended. A final remonstrance, drawn up by Burke with admirable skill, was carried on the eighth of March by a single vote in a full House. Had the experiment been repeated, the supporters of the coalition would probably have been in a minority. But the supplies had been voted ; the Mutiny Bill had been passed ; and the Parliament was dissolved.

The popular constituent bodies all over the country were, in general, enthusiastic on the side of the new government. A hundred and sixty of the supporters of the coalition lost their seats. The First Lord of the Treasury himself came in at the head of the poll for the University of Cambridge. His young friend Wilberforce was elected Knight of the great shire of York in opposition to the whole influence of the Fitzwilliams, Cavendishes, Dundases, and Saviles. In the midst of such triumphs, Pitt completed his twenty-fifth year. He was now the greatest subject that England had seen during many generations. He domineered absolutely over the cabinet, and was the favorite at once of the sovereign, of the Parliament, and of the nation. His father had never been so powerful, nor Walpole, nor Marlborough.

This narrative has now reached a point beyond which a full history of the life of Pitt would be a history of England, or rather of the whole civilized world ; and for such a history this is not the proper place. Here a very slight sketch must suffice ; and in that sketch prominence will be given to such points as may

enable a reader who is already acquainted with the general course of events to form a just notion of the character of the man on whom so much depended.

If we wish to arrive at a correct judgment of Pitt's merits and defects, we must never forget that he belonged to a peculiar class of statesmen, and that he must be tried by a peculiar standard. It is not easy to compare him fairly with such men as Ximenes and Sully, Richelieu and Oxenstiern, John de Witt and Warren Hastings. The means by which those politicians governed great communities were of quite a different kind from those which Pitt was under the necessity of employing. Some talents, which they never had any opportunity of showing that they possessed, were developed in him to an extraordinary degree. In some qualities, on the other hand, to which they owe a large part of their fame, he was decidedly their inferior. They transacted business in their closets, or at boards where a few confidential councillors sat. It was his lot to be born in an age and in a country in which parliamentary government was completely established ; his whole training from infancy was such as fitted him to bear a part in parliamentary government ; and, from the prime of his manhood to his death, all the powers of his vigorous mind were almost constantly exerted in the work of parliamentary government. He accordingly became the greatest master of the whole art of parliamentary government that has ever existed ; a greater than Montagu or Walpole ; a greater than his father, Chatham, or his rival, Fox ; a greater than either of his illustrious successors, Canning and Peel.

Parliamentary government, like every other con-

trivance of man, has its advantages and its disadvantages. On the advantages there is no need to dilate. The history of England during the hundred and seventy years which have elapsed since the House of Commons became the most powerful body in the State ; her immense and still growing prosperity ; her freedom ; her tranquillity; her greatness in arts, in sciences, and in arms ; her maritime ascendency ; the marvels of her public credit ; her American, her African, her Australian, her Asiatic empires—sufficiently prove the excellence of her institutions. But those institutions, though excellent, are assuredly not perfect. Parliamentary government is government by speaking. In such a government, the power of speaking is the most highly prized of all the qualities which a politician can possess ; and that power may exist, in the highest degree, without judgment, without fortitude, without skill in reading the characters of men or the signs of the times, without any knowledge of the principles of legislation or of political economy, and without any skill in diplomacy or in the administration of war. Nay, it may well happen that those very intellectual qualities which give a peculiar charm to the speeches of a public man may be incompatible with the qualities which would fit him to meet a pressing emergency with promptitude and firmness. It was thus with Charles Townshend. It was thus with Windham. It was a privilege to listen to those accomplished and ingenious orators. But in a perilous crisis they would have been found far inferior in all the qualities of rulers to such a man as Oliver Cromwell, who talked nonsense, or as William the Silent, who did not talk at all. When parliamentary government is established, a Charles Townshend

or a Windham will almost always exercise much greater influence than such men as the great Protector of England or as the founder of the Batavian commonwealth. In such a government, parliamentary talent, though quite distinct from the talents of a good executive or judicial officer, will be a chief qualification for executive and judicial office. From the Book of Dignities a curious list might be made out of chancellors ignorant of the principles of equity, and first lords of the Admiralty ignorant of the principles of navigation, of colonial ministers who could not repeat the names of the colonies, of lords of the Treasury who did not know the difference between funded and unfunded debt, and of secretaries of the India Board who did not know whether the Mahrattas were Mahometans or Hindoos. On these grounds, some persons, incapable of seeing more than one side of a question, have pronounced parliamentary government a positive evil, and have maintained that the administration would be greatly improved if the power now exercised by a large assembly were transferred to a single person. Men of sense will probably think the remedy very much worse than the disease, and will be of opinion that there would be small gain in exchanging Charles Townshend and Windham for the Prince of the Peace, or the poor slave and dog Steenie.

Pitt was emphatically the man of parliamentary government, the type of his class, the minion, the child —the spoiled child—of the House of Commons. For the House of Commons he had an hereditary, an infantile love. Through his whole boyhood, the House of Commons was never out of his thoughts, or out of the thoughts of his instructors. Reciting at his father's

knee, reading Thucydides and Cicero into English, analyzing the great Attic speeches on the Embassy and on the Crown, he was constantly in training for the conflicts of the House of Commons. He was a distinguished member of the House of Commons at twenty-one. The ability which he had displayed in the House of Commons made him the most powerful subject in Europe before he was twenty-five. It would have been happy for himself and for his country if his elevation had been deferred. Eight or ten years, during which he would have had leisure and opportunity for reading and reflection, for foreign travel, for social intercourse and free exchange of thought on equal terms with a great variety of companions, would have supplied what, without any fault on his part, was wanting to his powerful intellect. He had all the knowledge that he could be expected to have; that is to say, all the knowledge that a man can acquire while he is a student at Cambridge, and all the knowledge that a man can acquire when he is First Lord of the Treasury and Chancellor of the Exchequer. But the stock of general information which he brought from college, extraordinary for a boy, was far inferior to what Fox possessed, and beggarly when compared with the massy, the splendid, the various treasures laid up in the large mind of Burke. After Pitt became Minister, he had no leisure to learn more than was necessary for the purposes of the day which was passing over him. What was necessary for those purposes such a man could learn with little difficulty. He was surrounded by experienced and able public servants. He could at any moment command their best assistance. From the stores which they produced, his vigorous

mind rapidly collected the materials for a good parliamentary case ; and that was enough. Legislation and administration were with him secondary matters. To the work of framing statutes, of negotiating treaties, of organizing fleets and armies, of sending forth expeditions, he gave only the leavings of his time and the dregs of his fine intellect. The strength and sap of his mind were all drawn in a different direction. It was when the House of Commons was to be convinced and persuaded that he put forth all his powers.

Of those powers we must form our estimate chiefly from tradition ; for, of all the eminent speakers of the last age, Pitt has suffered most from the reporters. Even while he was still living, critics remarked that his eloquence could not be preserved, that he must be heard to be appreciated. They more than once applied to him the sentence in which Tacitus describes the fate of a senator whose rhetoric was admired in the Augustan age : " Haterii canorum illud et profluens cum ipso simul exstinctum est." There is, however, abundant evidence that nature had bestowed on Pitt the talents of a great orator ; and those talents had been developed in a very peculiar manner, first by his education, and secondly by the high official position to which he rose early, and in which he passed the greater part of his public life.

At his first appearance in Parliament he showed himself superior to all his contemporaries in command of language. He could pour forth a long succession of round and stately periods, without premeditation, without ever pausing for a word, without ever repeating a word, in a voice of silver clearness, and with a pronunciation so articulate that not a letter was slurred

over. He had less amplitude of mind and less richness of imagination than Burke, less ingenuity than Windham, less wit than Sheridan, less perfect mastery of dialectical fence, and less of that highest sort of eloquence which consists of reason and passion fused together, than Fox. Yet the almost unanimous judgment of those who were in the habit of listening to that remarkable race of men placed Pitt, as a speaker, above Burke, above Windham, above Sheridan, and not below Fox. His declamation was copious, polished, and splendid. In power of sarcasm he was probably not surpassed by any speaker, ancient or modern ; and of this formidable weapon he made merciless use. In two parts of the oratorical art which are of the highest value to a minister of state he was singularly expert. No man knew better how to be luminous or how to be obscure. When he wished to be understood, he never failed to make himself understood. He could with ease present to his audience, not perhaps an exact or profound, but a clear, popular, and plausible, view of the most extensive and complicated subject. Nothing was out of place ; nothing was forgotten ; minute details, dates, sums of money, were all faithfully preserved in his memory. Even intricate questions of finance, when explained by him, seemed clear to the plainest man among his hearers. On the other hand, when he did not wish to be explicit—and no man who is at the head of affairs always wishes to be explicit—he had a marvellous power of saying nothing in language which left on his audience the impression that he had said a great deal. He was at once the only man who could open a budget without notes, and the only man who, as Windham said, could speak that most

elaborately evasive and unmeaning of human compositions, a king's speech, without premeditation.

The effect of oratory will always to a great extent depend on the character of the orator. There perhaps never were two speakers whose eloquence had more of what may be called the race, more of the flavor, imparted by moral qualities than Fox and Pitt. The speeches of Fox owe a great part of their charm to that warmth and softness of heart, that sympathy with human suffering, that admiration for everything great and beautiful, and that hatred of cruelty and injustice, which interest and delight us even in the most defective reports. No person, on the other hand, could hear Pitt without perceiving him to be a man of high, intrepid, and commanding spirit, proudly conscious of his own rectitude and of his own intellectual superiority, incapable of the low vices of fear and envy, but too prone to feel and to show disdain. Pride, indeed, pervaded the whole man, was written in the harsh, rigid lines of his face, was marked by the way in which he walked, in which he sat, in which he stood, and, above all, in which he bowed. Such pride, of course, inflicted many wounds. It may confidently be affirmed that there cannot be found, in all the ten thousand invectives written against Fox, a word indicating that his demeanor had ever made a single personal enemy. On the other hand, several men of note who had been partial to Pitt, and who to the last continued to approve his public conduct and to support his administration—Cumberland, for example, Boswell, and Matthias—were so much irritated by the contempt with which he treated them that they complained in print of their wrongs. But his pride, though it made him bitterly disliked by

individuals, inspired the great body of his followers in Parliament and throughout the country with respect and confidence. They took him at his own valuation. They saw that his self-esteem was not that of an upstart, who was drunk with good-luck and with applause, and who, if fortune turned, would sink from arrogance into abject humility. It was that of the magnanimous man so finely described by Aristotle in the Ethics, of the man who thinks himself worthy of great things, being in truth worthy. It sprang from a consciousness of great powers and great virtues, and was never so conspicuously displayed as in the midst of difficulties and dangers which would have unnerved and bowed down any ordinary mind. It was closely connected, too, with an ambition which had no mixture of low cupidity. There was something noble in the cynical disdain with which the mighty Minister scattered riches and titles to right and left among those who valued them, while he spurned them out of his own way. Poor himself, he was surrounded by friends on whom he had bestowed three thousand, six thousand, ten thousand a year. Plain Mister himself, he had made more lords than any three ministers that had preceded him. The Garter, for which the first dukes in the kingdom were contending, was repeatedly offered to him, and offered in vain.

The correctness of his private life added much to the dignity of his public character. In the relations of son, brother, uncle, master, friend, his conduct was exemplary. In the small circle of his intimate associates, he was amiable, affectionate, even playful. They loved him sincerely; they regretted him long; and they would hardly admit that he who was so kind and gen-

tle with them could be stern and haughty with others. He indulged, indeed, somewhat too freely in wine, which he had early been directed to take as a medicine, and which use had made a necessary of life to him. But it was very seldom that any indication of undue excess could be detected in his tones or gestures ; and, in truth, two bottles of port were little more to him than two dishes of tea. He had, when he was first introduced into the clubs of St. James's Street, shown a strong taste for play; but he had the prudence and the resolution to stop before this taste had acquired the strength of habit. From the passion which generally exercises the most tyrannical dominion over the young he possessed an immunity which is probably to be ascribed partly to his temperament and partly to his situation. His constitution was feeble ; he was very shy, and he was very busy. The strictness of his morals furnished such buffoons as Peter Pindar and Captain Morris with an inexhaustible theme for merriment of no very delicate kind. But the great body of the middle class of Englishmen could not see the joke. They warmly praised the young statesman for commanding his passions, and for covering his frailties, if he had frailties, with decorous obscurity, and would have been very far indeed from thinking better of him if he had vindicated himself from the taunts of his enemies by taking under his protection a Nancy Parsons or a Marianne Clark.

No part of the immense popularity which Pitt long enjoyed is to be attributed to the eulogies of wits and poets. It might have been naturally expected that a man of genius, of learning, of taste, an orator whose diction was often compared to that of Tully, the repre-

sentative, too, of a great university, would have taken a peculiar pleasure in befriending eminent writers, to whatever political party they might have belonged. The love of literature had induced Augustus to heap benefits on Pompeians, Somers to be the protector of Nonjurors, Harley to make the fortunes of Whigs. But it could not move Pitt to show any favor even to Pittites. He was doubtless right in thinking that, in general, poetry, history, and philosophy ought to be suffered, like calico and cutlery, to find their proper price in the market, and that to teach men of letters to look habitually to the State for their recompense is bad for the State and bad for letters. Assuredly nothing can be more absurd or mischievous than to waste the public money in bounties for the purpose of inducing people who ought to be weighing out grocery or measuring out drapery to write bad or middling books. But though the sound rule is that authors should be left to be remunerated by their readers, there will, in every generation, be a few exceptions to this rule. To distinguish these special cases from the mass is an employment well worthy of the faculties of a great and accomplished ruler ; and Pitt would assuredly have had little difficulty in finding such cases. While he was in power, the greatest philologist of the age, his own contemporary at Cambridge, was reduced to earn a livelihood by the lowest literary drudgery, and to spend in writing squibs for the Morning Chronicle years to which we might have owed an all but perfect text of the whole tragic and comic drama of Athens. The greatest historian of the age, forced by poverty to leave his country, completed his immortal work on the shores of Lake Leman. The political heterodoxy of Porson, and the

religious heterodoxy of Gibbon, may, perhaps, be pleaded in defence of the Minister by whom those eminent men were neglected. But there were other cases in which no such excuse could be set up. Scarcely had Pitt obtained possession of unbounded power when an aged writer of the highest eminence, who had made very little by his writings, and who was sinking into the grave under a load of infirmities and sorrows, wanted five or six hundred pounds to enable him, during the winter or two which might still remain to him, to draw his breath more easily in the soft climate of Italy. Not a farthing was to be obtained ; and before Christmas the author of the English Dictionary and of the Lives of the Poets had gasped his last in the river-fog and coal-smoke of Fleet Street. A few months after the death of Johnson appeared the Task, incomparably the best poem that any Englishman then living had produced—a poem, too, which could hardly fail to excite in a well-constituted mind a feeling of esteem and compassion for the poet, a man of genius and virtue, whose means were scanty, and whom the most cruel of all the calamities incident to humanity had made incapable of supporting himself by vigorous and sustained exertion. Nowhere had Chatham been praised with more enthusiasm, or in verse more worthy of the subject, than in the Task. The son of Chatham, however, contented himself with reading and admiring the book, and left the author to starve. The pension which, long after, enabled poor Cowper to close his melancholy life unmolested by duns and bailiffs was obtained for him by the strenuous kindness of Lord Spencer. What a contrast between the way in which Pitt acted towards Johnson and the way

in which Lord Grey acted toward his political enemy Scott, when Scott, worn out by misfortune and disease, was advised to try the effect of the Italian air ! What a contrast between the way in which Pitt acted towards Cowper and the way in which Burke, a poor man and out of place, acted towards Crabbe ! Even Dundas, who made no pretensions to literary taste, and was content to be considered as a hard-headed and somewhat coarse man of business, was, when compared with his eloquent and classically educated friend, a Mæcenas or a Leo. Dundas made Burns an exciseman, with seventy pounds a year ; and this was more than Pitt, during his long tenure of power, did for the encouragement of letters. Even those who may think that it is, in general, no part of the duty of a government to reward literary merit will hardly deny that a government which has much lucrative Church preferment in its gift is bound, in distributing that preferment, not to overlook divines whose writings have rendered great service to the cause of religion. But it seems never to have occurred to Pitt that he lay under any such obligation. All the theological works of all the numerous bishops whom he made and translated are not, when put together, worth fifty pages of the Horæ Paulinæ, of the Natural Theology, or of the View of the Evidences of Christianity. But on Paley the all-powerful Minister never bestowed the smallest benefice. Artists Pitt treated as contemptuously as writers. For painting he did simply nothing. Sculptors who had been selected to execute monuments voted by Parliament had to haunt the antechambers of the Treasury during many years before they could obtain a farthing from him. One of them, after vainly soliciting the Minister for

payment during fourteen years, had the courage to present a memorial to the King, and thus obtained tardy and ungracious justice. Architects it was absolutely necessary to employ ; and the worst that could be found seem to have been employed. Not a single fine public building of any kind or in any style was erected during his long administration. It may be confidently affirmed that no ruler whose abilities and attainments would bear any comparison with his has ever shown such cold disdain for what is excellent in arts and letters.

His first administration lasted seventeen years. That long period is divided by a strongly marked line into two almost exactly equal parts. The first part ended and the second began in the autumn of 1792. Throughout both parts Pitt displayed in the highest degree the talents of a parliamentary leader. During the first part he was a fortunate, and in many respects a skilful, administrator. With the difficulties which he had to encounter during the second part he was altogether incapable of contending ; but his eloquence and his perfect mastery of the tactics of the House of Commons concealed his incapacity from the multitude.

The eight years which followed the general election of 1784 were as tranquil and prosperous as any eight years in the whole history of England. Neighboring nations which had lately been in arms against her, and which had flattered themselves that, in losing her American colonies, she had lost a chief source of her wealth and of her power, saw, with wonder and vexation, that she was more wealthy and more powerful than ever. Her trade increased. Her manufactures flourished. Her exchequer was full to overflowing.

Very idle apprehensions were generally entertained that the public debt, though much less than a third of the debt which we now bear with ease, would be found too heavy for the strength of the nation. Those apprehensions might not perhaps have been easily quieted by reason. But Pitt quieted them by a juggle. He succeeded in persuading first himself, and then the whole nation, his opponents included, that a new sinking fund, which, so far as it differed from former sinking funds, differed for the worse, would, by virtue of some mysterious power of propagation belonging to money, put into the pocket of the public creditor great sums not taken out of the pocket of the taxpayer. The country, terrified by a danger which was no danger, hailed with delight and boundless confidence a remedy which was no remedy. The Minister was almost universally extolled as the greatest of financiers. Meanwhile both branches of the House of Bourbon found that England was as formidable an antagonist as she had ever been. France had formed a plan for reducing Holland to vassalage. But England interposed, and France receded. Spain interrupted by violence the trade of our merchants with the regions near the Oregon. But England armed, and Spain receded. Within the island there was profound tranquillity. The King was, for the first time, popular. During the twenty-three years which had followed his accession he had not been loved by his subjects. His domestic virtues were acknowledged. But it was generally thought that the good qualities by which he was distinguished in private life were wanting to his political character. As a sovereign, he was resentful, unforgiving, stubborn, cunning. Under his rule the country had sus-

tained cruel disgraces and disasters ; and every one of those disgraces and disasters was imputed to his strong antipathies, and to his perverse obstinacy in the wrong. One statesman after another complained that he had been induced by royal caresses, entreaties, and promises to undertake the direction of affairs at a difficult conjuncture ; and that, as soon as he had, not without sullying his fame and alienating his best friends, served the turn for which he was wanted, his ungrateful master began to intrigue against him and to canvass against him. Grenville, Rockingham, Chatham, men of widely different characters, but all three upright and high-spirited, agreed in thinking that the Prince under whom they had successively held the highest place in the government was one of the most insincere of mankind. His confidence was reposed, they said, not in those known and responsible counsellors to whom he had delivered the seals of office, but in secret advisers who stole up the back-stairs into his closet. In Parliament, his ministers, while defending themselves against the attacks of the Opposition in front, were perpetually, at his instigation, assailed on the flank or in the rear by a vile band of mercenaries who called themselves his friends. These men constantly, while in possession of lucrative places in his service, spoke and voted against bills which he had authorized the First Lord of the Treasury or the Secretary of State to bring in. But from the day on which Pitt was placed at the head of affairs there was an end of secret influence. His haughty and aspiring spirit was not to be satisfied with the mere show of power. Any attempt to undermine him at court, any mutinous movement among his followers in the House of Commons, was certain to be at

once put down. He had only to tender his resignation, and he could dictate his own terms. For he, and he alone, stood between the King and the coalition. He was therefore little less than Mayor of the Palace. The nation loudly applauded the King for having the wisdom to repose entire confidence in so excellent a minister. His Majesty's private virtues now began to produce their full effect. He was generally regarded as the model of a respectable country gentleman, honest, good-natured, sober, religious. He rose early; he dined temperately; he was strictly faithful to his wife; he never missed church; and at church he never missed a response. His people heartily prayed that he might long reign over them; and they prayed the more heartily because his virtues were set off to the best advantage by the vices and follies of the Prince of Wales, who lived in close intimacy with the chiefs of the Opposition.

How strong this feeling was in the public mind appeared singularly on one great occasion. In the autumn of 1788 the King became insane. The Opposition, eager for office, committed the great indiscretion of asserting that the heir apparent had, by the fundamental laws of England, a right to be Regent with the full powers of royalty. Pitt, on the other hand, maintained it to be a constitutional doctrine that, when a sovereign is, by reason of infancy, disease, or absence, incapable of exercising the regal functions, it belongs to the estates of the realm to determine who shall be the vicegerent, and with what portion of the executive authority such vicegerent shall be intrusted. A long and violent contest followed, in which Pitt was supported by the great body of the people with as much

enthusiasm as during the first months of his administration. Tories with one voice applauded him for defending the sick-bed of a virtuous and unhappy sovereign against a disloyal faction and an undutiful son. Not a few Whigs applauded him for asserting the authority of parliaments and the principles of the Revolution, in opposition to a doctrine which seemed to have too much affinity with the servile theory of indefeasible hereditary right. The middle class, always zealous on the side of decency and the domestic virtues, looked forward with dismay to a reign resembling that of Charles the Second. The palace, which had now been, during thirty years, the pattern of an English home, would be a public nuisance, a school of profligacy. To the good King's repast of mutton and lemonade, despatched at three o'clock, would succeed midnight banquets, from which the guests would be carried home speechless. To the backgammon-board at which the good King played for a little silver with his equerries, would succeed faro-tables from which young patricians who had sat down rich would rise up beggars. The drawing-room, from which the frown of the Queen had repelled a whole generation of frail beauties, would now be again what it had been in the days of Barbara Palmer and Louisa de Querouaille. Nay, severely as the public reprobated the Prince's many illicit attachments, his one virtuous attachment was reprobated more severely still. Even in grave and pious circles his Protestant mistresses gave less scandal than his Popish wife. That he must be Regent, nobody ventured to deny. But he and his friends were so unpopular that Pitt could, with general approbation, propose to limit the powers of the Regent by restrictions to which it would have been impossible

to subject a prince beloved and trusted by the country. Some interested men, fully expecting a change of administration, went over to the Opposition. But the majority, purified by these desertions, closed its ranks, and presented a more firm array than ever to the enemy. In every division Pitt was victorious. When at length, after a stormy interregnum of three months, it was announced, on the very eve of the inauguration of the Regent, that the King was himself again, the nation was wild with delight. On the evening of the day on which his Majesty resumed his functions, a spontaneous illumination, the most general that had ever been seen in England, brightened the whole vast space from Highgate to Tooting, and from Hammersmith to Greenwich. On the day on which he returned thanks in the cathedral of his capital, all the horses and carriages within a hundred miles of London were too few for the multitudes which flocked to see him pass through the streets. A second illumination followed, which was even superior to the first in magnificence. Pitt with difficulty escaped from the tumultuous kindness of an innumerable multitude which insisted on drawing his coach from St. Paul's Churchyard to Downing Street. This was the moment at which his fame and fortune may be said to have reached the zenith. His influence in the closet was as great as that of Carr or Villiers had been. His dominion over the Parliament was more absolute than that of Walpole or Pelham had been. He was, at the same time, as high in the favor of the populace as ever Wilkes or Sacheverell had been. Nothing did more to raise his character than his noble poverty. It was well known that, if he had been dismissed from office

after more than five years of boundless power, he would hardly have carried out with him a sum sufficient to furnish the set of chambers in which, as he cheerfully declared, he meant to resume the practice of the law. His admirers, however, were by no means disposed to suffer him to depend on daily toil for his daily bread. The voluntary contributions which were awaiting his acceptance in the city of London alone would have sufficed to make him a rich man. But it may be doubted whether his haughty spirit would have stooped to accept a provision so honorably earned and so honorably bestowed.

To such a height of power and glory had this extraordinary man risen at twenty-nine years of age. And now the tide was on the turn. Only ten days after the triumphant procession to St. Paul's, the States-General of France, after an interval of a hundred and seventy-four years, met at Versailles.

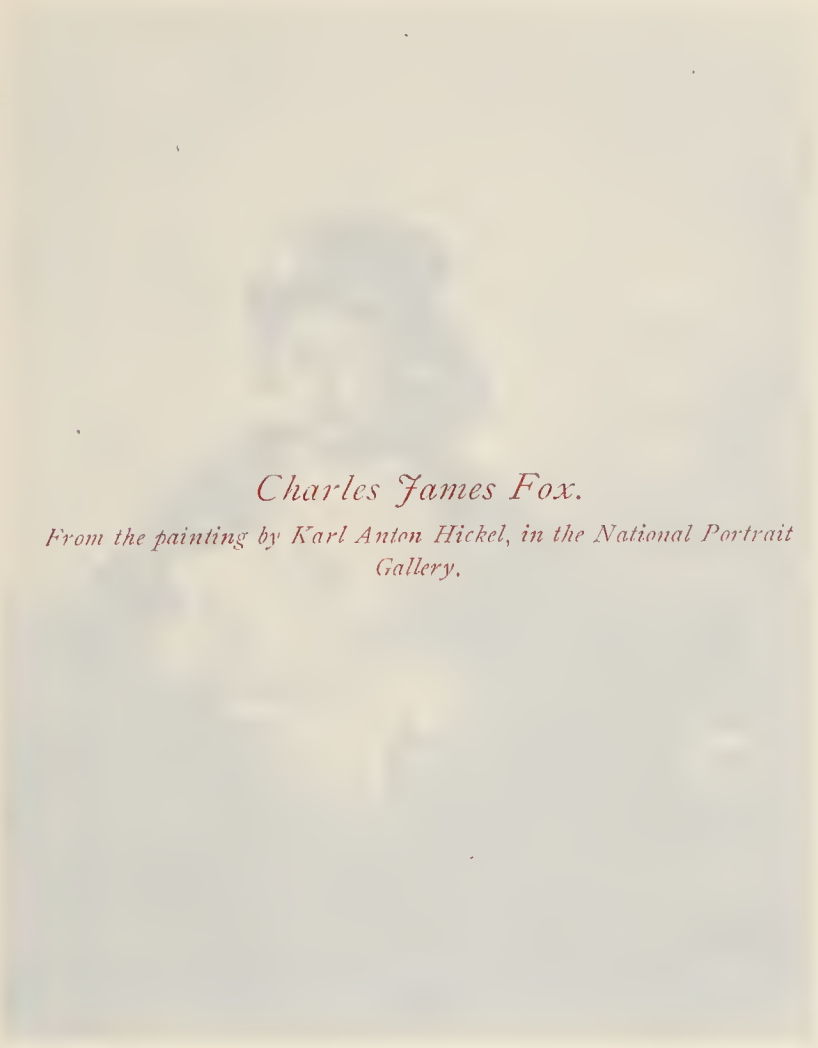
The nature of the great Revolution which followed was long very imperfectly understood in this country. Burke saw much further than any of his contemporaries; but whatever his sagacity descried was refracted and discolored by his passions and his imagination. More than three years elapsed before the principles of the English administration underwent any material change. Nothing could as yet be milder or more strictly constitutional than the Minister's domestic policy. Not a single act indicating an arbitrary temper or a jealousy of the people could be imputed to him. He had never applied to Parliament for any extraordinary powers. He had never used with harshness the ordinary powers intrusted by the Constitution to the executive government. Not a single State prosecution which would

even now be called oppressive had been instituted by him. Indeed, the only oppressive State prosecution instituted during the first eight years of his administration was that of Stockdale, which is to be attributed, not to the government, but to the chiefs of the Opposition. In office, Pitt had redeemed the pledges which he had, at his entrance into public life, given to the supporters of parliamentary reform. He had, in 1785, brought forward a judicious plan for the improvement of the representative system, and had prevailed on the King, not only to refrain from talking against that plan, but to recommend it to the Houses in a speech from the throne.[1] This attempt failed ; but there can be little doubt that, if the French Revolution had not produced a violent reaction of public feeling, Pitt would have performed, with little difficulty and no danger, that great work which, at a later period, Lord Grey could accomplish only by means which for a time loosened the very foundations of the commonwealth. When the atrocities of the slave-trade were first brought under the consideration of Parliament, no abolitionist was more zealous than Pitt. When sickness prevented Wilberforce from appearing in public, his place was most efficiently supplied by his friend the Minister. A humane bill, which mitigated the horrors of the middle passage, was, in 1788, carried by the eloquence and determined spirit of Pitt, in spite of the opposition of some of his own colleagues ; and it ought always to be

[1] The speech with which the King opened the session of 1785 concluded with an assurance that his Majesty would heartily concur in every measure which could tend to secure the true principles of the Constitution. These words were at the time understood to refer to Pitt's Reform Bill.

remembered to his honor that, in order to carry that bill, he kept the Houses sitting, in spite of many murmurs, long after the business of the government had been done and the Appropriation Act passed. In 1791 he cordially concurred with Fox in maintaining the sound constitutional doctrine that an impeachment is not terminated by a dissolution. In the course of the same year the two great rivals contended side by side in a far more important cause. They are fairly entitled to divide the high honor of having added to our statute-book the inestimable law which places the liberty of the press under the protection of juries. On one occasion, and one alone, Pitt, during the first half of his long administration, acted in a manner unworthy of an enlightened Whig. In the debate on the Test Act, he stooped to gratify the master whom he served, the university which he represented, and the great body of clergymen and country gentlemen on whose support he rested, by talking, with little heartiness, indeed, and with no asperity, the language of a Tory. With this single exception, his conduct from the end of 1783 to the middle of 1792 was that of an honest friend of civil and religious liberty.

Nor did anything, during that period, indicate that he loved war, or harbored any malevolent feeling against any neighboring nation. Those French writers who have represented him as a Hannibal sworn in childhood by his father to bear eternal hatred to France ; as having, by mysterious intrigues and lavish bribes, instigated the leading Jacobins to commit those excesses which dishonored the Revolution ; as having been the real author of the first coalition, know nothing of his character or of his history. So far was he



Charles James Fox.

From the painting by Karl Anton Hickel, in the National Portrait Gallery.

from being a deadly enemy to France that his laudable attempts to bring about a closer connection with that country by means of a wise and liberal treaty of commerce brought on him the severe censure of the Opposition. He was told in the House of Commons that he was a degenerate son, and that his partiality for the hereditary foes of our island was enough to make his great father's bones stir under the pavement of the Abbey.

And this man, whose name, if he had been so fortunate as to die in 1792, would now have been associated with peace, with freedom, with philanthropy, with temperate reform, with mild and constitutional administration, lived to associate his name with arbitrary government, with harsh laws harshly executed, with alien bills, with gagging bills, with suspensions of the Habeas Corpus Act, with cruel punishments inflicted on some political agitators, with unjustifiable prosecutions instituted against others, and with the most costly and most sanguinary wars of modern times. He lived to be held up to obloquy as the stern oppressor of England and the indefatigable disturber of Europe. Poets, contrasting his earlier with his later years, likened him sometimes to the apostle who kissed in order to betray, and sometimes to the evil angels who kept not their first estate. A satirist of great genius introduced the fiends of Famine, Slaughter, and Fire, proclaiming that they had received their commission from One whose name was formed of four letters, and promising to give their employer ample proofs of gratitude. Famine would gnaw the multitude till they should rise up against him in madness. The demon of Slaughter would impel them to tear him limb from limb. But

Fire boasted that she alone could reward him as he deserved, and that she would cling round him to all eternity. By the French press and the French tribune every crime that disgraced and every calamity that afflicted France was ascribed to the monster Pitt and his guineas. While the Jacobins were dominant, it was he who had corrupted the Gironde, who had raised Lyons and Bordeaux against the Convention, who had suborned Paris to assassinate Lepelletier, and Cecilia Regnault to assassinate Robespierre. When the Thermidorian reaction came, all the atrocities of the Reign of Terror were imputed to him. Collot d'Herbois and Fouquier-Tinville had been his pensioners. It was he who had hired the murderers of September, who had dictated the pamphlets of Marat and the Carmagnoles of Barère, who had paid Lebon to deluge Arras with blood, and Carrier to choke the Loire with corpses.

The truth is that he liked neither war nor arbitrary government. He was a lover of peace and freedom, driven, by a stress against which it was hardly possible for any will or any intellect to struggle, out of the course to which his inclinations pointed, and forced into a policy repugnant to his feelings and unsuited to his talents.

The charge of apostasy is grossly unjust. A man ought no more to be called an apostate because his opinions alter with the opinions of the great body of his contemporaries than he ought to be called an Oriental traveller because he is always going round from west to east with the globe and everything that is upon it. Between the spring of 1789 and the close of 1792, the public mind of England underwent a great change.

If the change of Pitt's sentiments attracted peculiar notice, it was not because he changed more than his neighbors—for, in fact, he changed less than most of them—but because his position was far more conspicuous than theirs; because he was, till Bonaparte appeared, the individual who filled the greatest space in the eyes of the inhabitants of the civilized world. During a short time the nation, and Pitt, as one of the nation, looked with interest and approbation on the French Revolution. But soon vast confiscations, the violent sweeping-away of ancient institutions, the domination of clubs, the barbarities of mobs maddened by famine and hatred, produced a reaction here. The court, the nobility, the gentry, the clergy, the manufacturers, the merchants—in short, nineteen twentieths of those who had good roofs over their heads and good coats on their backs—became eager and intolerant Antijacobins. This feeling was at least as strong among the Minister's adversaries as among his supporters. Fox in vain attempted to restrain his followers. All his genius, all his vast personal influence, could not prevent them from rising up against him in general mutiny. Burke set the example of revolt; and Burke was in no long time joined by Portland, Spencer, Fitzwilliam, Loughborough, Carlisle, Malmesbury, Windham, Elliot. In the House of Commons the followers of the great Whig statesman and orator diminished from about a hundred and sixty to fifty. In the House of Lords he had but ten or twelve adherents left. There can be no doubt that there would have been a similar mutiny on the ministerial benches if Pitt had obstinately resisted the general wish. Pressed at once by his master and by his colleagues, by old friends and

by old opponents, he abandoned, slowly and reluctantly, the policy which was dear to his heart. He labored hard to avert the European war. When the European war broke out he still flattered himself that it would not be necessary for this country to take either side. In the spring of 1792 he congratulated the Parliament on the prospect of long and profound peace, and proved his sincerity by proposing large remissions of taxation. Down to the end of that year he continued to cherish the hope that England might be able to preserve neutrality. But the passions which raged on both sides of the Channel were not to be restrained. The Republicans who ruled France were inflamed by a fanaticism resembling that of the Mussulmans who, with the Koran in one hand and the sword in the other, went forth, conquering and converting, eastward to the Bay of Bengal, and westward to the Pillars of Hercules. The higher and middle classes of England were animated by zeal not less fiery than that of the Crusaders who raised the cry of *Deus vult* at Clermont. The impulse which drove the two nations to a collision was not to be arrested by the abilities or by the authority of any single man. As Pitt was in the front of his fellows, and towered high above them, he seemed to lead them. But, in fact, he was violently pushed on by them, and, had he held back but a little more than he did, would have been thrust out of their way or trampled under their feet.

He yielded to the current, and from that day his misfortunes began. The truth is that there were only two consistent courses before him. Since he did not choose to oppose himself, side by side with Fox, to the public feeling, he should have taken the advice of

Burke, and should have availed himself of that feeling to the full extent. If it was impossible to preserve peace, he should have adopted the only policy which could lead to victory. He should have proclaimed a Holy War for religion, morality, property, order, public law, and should have thus opposed to the Jacobins an energy equal to their own. Unhappily he tried to find a middle path, and he found one which united all that was worst in both extremes. He went to war; but he would not understand the peculiar character of that war. He was obstinately blind to the plain fact that he was contending against a state which was also a sect, and that the new quarrel between England and France was of quite a different kind from the old quarrels about colonies in America and fortresses in the Netherlands. He had to combat frantic enthusiasm, boundless ambition, reckless activity, the wildest and most audacious spirit of innovation; and he acted as if he had to deal with the harlots and fops of the old Court of Versailles, with Madame de Pompadour and the Abbé de Bernis. It was pitiable to hear him, year after year, proving to an admiring audience that the wicked Republic was exhausted; that she could not hold out; that her credit was gone, and her assignats were not worth more than the paper of which they were made; as if credit were necessary to a government of which the principle was rapine, as if Alboin could not turn Italy into a desert till he had negotiated a loan at five per cent., as if the exchequer bills of Attila had been at par. It was impossible that a man who so completely mistook the nature of a contest could carry on that contest successfully. Great as Pitt's abilities were, his military administration was that of

a driveller. He was at the head of a nation engaged in a struggle for life and death, of a nation eminently distinguished by all the physical and all the moral qualities which make excellent soldiers. The resources at his command were unlimited. The Parliament was even more ready to grant him men and money than he was to ask for them. In such an emergency, and with such means, such a statesman as Richelieu, as Louvois, as Chatham, as Wellesley, would have created in a few months one of the finest armies in the world, and would soon have discovered and brought forward generals worthy to command such an army. Germany might have been saved by another Blenheim ; Flanders recovered by another Ramilies ; another Poitiers might have delivered the Royalist and Catholic provinces of France from a yoke which they abhorred, and might have spread terror even to the barriers of Paris. But the fact is that, after eight years of war ; after a vast destruction of life ; after an expenditure of wealth far exceeding the expenditure of the American war, of the Seven Years' War, of the war of the Austrian Succession, and of the war of the Spanish Succession, united, the English army, under Pitt, was the laughing-stock of all Europe. It could not boast of one single brilliant exploit. It had never shown itself on the Continent but to be beaten, chased, forced to re-embark, or forced to capitulate. To take some sugar-island in the West Indies, to scatter some mob of half-naked Irish peasants, such were the most splendid victories won by the British troops under Pitt's auspices.

The English navy no mismanagement could ruin. But during a long period whatever mismanagement could do was done. The Earl of Chatham, without a

single qualification for high public trust, was made, by fraternal partiality, First Lord of the Admiralty, and was kept in that great post during two years of a war in which the very existence of the State depended on the efficiency of the fleet. He continued to doze away and trifle away the time which ought to have been devoted to the public service, till the whole mercantile body, though generally disposed to support the government, complained bitterly that our flag gave no protection to our trade. Fortunately he was succeeded by George Earl Spencer, one of those chiefs of the Whig party who, in the great schism caused by the French Revolution, had followed Burke. Lord Spencer, though inferior to many of his colleagues as an orator, was decidedly the best administrator among them. To him it was owing that a long and gloomy succession of days of fasting, and, most emphatically, of humiliation, was interrupted, twice in the short space of eleven months, by days of thanksgiving for great victories.

It may seem paradoxical to say that the incapacity which Pitt showed in all that related to the conduct of the war is, in some sense, the most decisive proof that he was a man of very extraordinary abilities. Yet this is the simple truth. For assuredly one tenth part of his errors and disasters would have been fatal to the power and influence of any minister who had not possessed, in the highest degree, the talents of a parliamentary leader. While his schemes were confounded; while his predictions were falsified; while the coalitions which he had labored to form were falling to pieces; while the expeditions which he had sent forth at enormous cost were ending in rout and disgrace; while the

enemy against whom he was feebly contending was subjugating Flanders and Brabant, the Electorate of Mentz and the Electorate of Treves, Holland, Piedmont, Liguria, Lombardy, his authority over the House of Commons was constantly becoming more and more absolute. There was his empire. There were his victories, his Lodi and his Arcola, his Rivoli and his Marengo. If some great misfortune, a pitched battle lost by the allies, the annexation of a new department to the French Republic, a sanguinary insurrection in Ireland, a mutiny in the fleet, a panic in the city, a run on the bank, had spread dismay through the ranks of his majority, that dismay lasted only till he rose from the Treasury bench, drew up his haughty head, stretched his arm in commanding gesture, and poured forth, in deep and sonorous tones, the lofty language of inextinguishable hope and inflexible resolution. Thus, through a long and calamitous period, every disaster that happened without the walls of Parliament was regularly followed by a triumph within them. At length he had no longer an Opposition to encounter. Of the great party which had contended against him during the first eight years of his administration, more than one half now marched under his standard, with his old competitor the Duke of Portland at their head ; and the rest had, after many vain struggles, quitted the field in despair. Fox had retired to the shades of St. Anne's Hill, and had there found, in the society of friends whom no vicissitude could estrange from him, of a woman whom he tenderly loved, and of the illustrious dead of Athens, of Rome, and of Florence, ample compensation for all the misfortunes of his public life. Session followed session with scarcely a single

division. In the eventful year 1799, the largest minority that could be mustered against the government was twenty-five.

In Pitt's domestic policy there was at this time assuredly no want of vigor. While he offered to French Jacobinism a resistance so feeble that it only encouraged the evil which he wished to suppress, he put down English Jacobinism with a strong hand. The Habeas Corpus Act was repeatedly suspended. Public meetings were placed under severe restraints. The government obtained from Parliament power to send out of the country aliens who were suspected of evil designs; and that power was not suffered to be idle. Writers who propounded doctrines adverse to monarchy and aristocracy were proscribed and punished without mercy. It was hardly safe for a Republican to avow his political creed over his beefsteak and his bottle of port at a chop-house. The old laws of Scotland against sedition—laws which were considered by Englishmen as barbarous, and which a succession of governments had suffered to rust—were now furbished up and sharpened anew. Men of cultivated minds and polished manners were, for offences which at Westminster would have been treated as mere misdemeanors, sent to herd with felons at Botany Bay. Some reformers whose opinions were extravagant and whose language was intemperate, but who had never dreamed of subverting the government by physical force, were indicted for high-treason, and were saved from the gallows only by the righteous verdicts of juries. This severity was at the time loudly applauded by alarmists whom fear had made cruel, but will be seen in a very different light by posterity. The truth is that the Englishmen who

wished for a revolution were, even in number, not formidable, and, in everything but number, a faction utterly contemptible, without arms, or funds, or plans, or organization, or leader. There can be no doubt that Pitt, strong as he was in the support of the great body of the nation, might easily have repressed the turbulence of the discontented minority by firmly yet temperately enforcing the ordinary law. Whatever vigor he showed during this unfortunate part of his life was vigor out of place and season. He was all feebleness and languor in his conflict with the foreign enemy who was really to be dreaded, and reserved all his energy and resolution for the domestic enemy who might safely have been despised.

One part only of Pitt's conduct during the last eight years of the eighteenth century deserves high praise. He was the first English minister who formed great designs for the benefit of Ireland. The manner in which the Roman Catholic population of that unfortunate country had been kept down during many generations seemed to him unjust and cruel ; and it was scarcely possible for a man of his abilities not to perceive that, in a contest against the Jacobins, the Roman Catholics were his natural allies. Had he been able to do all that he wished, it is probable that a wise and liberal policy would have averted the rebellion of 1798. But the difficulties which he encountered were great, perhaps insurmountable ; and the Roman Catholics were, rather by his misfortune than by his fault, thrown into the hands of the Jacobins. There was a third great rising of the Irishry against the Englishry, a rising not less formidable than the risings of 1641 and 1689. The Englishry remained victorious ; and it was necessary

for Pitt, as it had been necessary for Oliver Cromwell and William of Orange before him, to consider how the victory should be used. It is only just to his memory to say that he formed a scheme of policy so grand and so simple, so righteous and so humane, that it would alone entitle him to a high place among statesmen. He determined to make Ireland one kingdom with England, and, at the same time, to relieve the Roman Catholic laity from civil disabilities, and to grant a public maintenance to the Roman Catholic clergy. Had he been able to carry these noble designs into effect, the Union would have been a Union indeed. It would have been inseparably associated in the minds of the great majority of Irishmen with civil and religious freedom ; and the old Parliament in College Green would have been regretted only by a small knot of discarded jobbers and oppressors, and would have been remembered by the body of the nation with the loathing and contempt due to the most tyrannical and the most corrupt assembly that had ever sat in Europe. But Pitt could execute only one half of what he had projected. He succeeded in obtaining the consent of the parliaments of both kingdoms to the Union ; but that reconciliation of races and sects without which the Union could exist only in name was not accomplished. He was well aware that he was likely to find difficulties in the closet. But he flattered himself that, by cautious and dexterous management, those difficulties might be overcome. Unhappily, there were traitors and sycophants in high place, who did not suffer him to take his own time and his own way, but prematurely disclosed his scheme to the King, and disclosed it in the manner most likely to irritate a weak and diseased

mind. His Majesty absurdly imagined that his coronation oath bound him to refuse his assent to any bill for relieving Roman Catholics from civil disabilities. To argue with him was impossible. Dundas tried to explain the matter, but was told to keep his Scotch metaphysics to himself. Pitt and Pitt's ablest colleagues resigned their offices. It was necessary that the King should make a new arrangement. But by this time his anger and distress had brought back the malady which had, many years before, incapacitated him for the discharge of his functions. He actually assembled his family, read the coronation oath to them, and told them that, if he broke it, the crown would immediately pass to the House of Savoy. It was not till after an interregnum of several weeks that he regained the full use of his small faculties, and that a ministry after his own heart was at length formed.

The materials out of which he had to construct a government were neither solid nor splendid. To that party, weak in numbers, but strong in every kind of talent, which was hostile to the domestic and foreign policy of his late advisers, he could not have recourse. For that party, while it differed from his late advisers on every point on which they had been honored with his approbation, cordially agreed with them as to the single matter which had brought on them his displeasure. All that was left to him was to call up the rear ranks of the old ministry to form the front rank of a new ministry. In an age pre-eminently fruitful of parliamentary talents, a cabinet was formed containing hardly a single man who, in parliamentary talents, could be considered as even of the second rate. The most important offices in the State were bestowed on

decorous and laborious mediocrity. Henry Addington was at the head of the Treasury. He had been an early, indeed an hereditary, friend of Pitt, and had by Pitt's influence been placed, while still a young man, in the chair of the House of Commons. He was universally admitted to have been the best speaker that had sat in that chair since the retirement of Onslow. But nature had not bestowed on him very vigorous faculties; and the highly respectable situation which he had long occupied with honor had rather unfitted than fitted him for the discharge of his new duties. His business had been to bear himself evenly between contending factions. He had taken no part in the war of words; and he had always been addressed with marked deference by the great orators who thundered against each other from his right and from his left. It was not strange that when, for the first time, he had to encounter keen and vigorous antagonists, who dealt hard blows without the smallest ceremony, he should have been awkward and unready, or that the air of dignity and authority which he had acquired in his former post, and of which he had not divested himself, should have made his helplessness laughable and pitiable. Nevertheless, during many months, his power seemed to stand firm. He was a favorite with the King, whom he resembled in narrowness of mind, and to whom he was more obsequious than Pitt had ever been. The nation was put into high good-humor by a peace with France. The enthusiasm with which the upper and middle classes had rushed into the war had spent itself. Jacobinism was no longer formidable. Everywhere there was a strong reaction against what was called the atheistical and anarchical philosophy of the

eighteenth century. Bonaparte, now First Consul, was busied in constructing, out of the ruins of old institutions, a new ecclesiastical establishment and a new order of knighthood. That nothing less than the dominion of the whole civilized world would satisfy his selfish ambition was not yet suspected ; nor did even wise men see any reason to doubt that he might be as safe a neighbor as any prince of the House of Bourbon had been. The treaty of Amiens was therefore hailed by the great body of the English people with extravagant joy. The popularity of the Minister was for the moment immense. His want of parliamentary ability was, as yet, of little consequence ; for he had scarcely any adversary to encounter. The old Opposition, delighted by the peace, regarded him with favor. A new Opposition had indeed been formed by some of the late ministers, and was led by Grenville in the House of Lords, and by Windham in the House of Commons. But the new Opposition could scarcely muster ten votes, and was regarded with no favor by the country. On Pitt the ministers relied as on their firmest support. He had not, like some of his colleagues, retired in anger. He had expressed the greatest respect for the conscientious scruple which had taken possession of the royal mind ; and he had promised his successors all the help in his power. In private his advice was at their service. In Parliament he took his seat on the bench behind them ; and, in more than one debate, defended them with powers far superior to their own. The King perfectly understood the value of such assistance. On one occasion, at the palace, he took the old Minister and the new Minister aside. " If we three," he said, " keep together, all will go well."

But it was hardly possible, human nature being what it is, and, more especially, Pitt and Addington being what they were, that this union should be durable. Pitt, conscious of superior powers, imagined that the place which he had quitted was now occupied by a mere puppet which he had set up, which he was to govern while he suffered it to remain, and which he was to fling aside as soon as he wished to resume his old position. Nor was it long before he began to pine for the power which he had relinquished. He had been so early raised to supreme authority in the State, and had enjoyed that authority so long, that it had become necessary to him. In retirement his days passed heavily. He could not, like Fox, forget the pleasures and cares of ambition in the company of Euripides and Herodotus. Pride restrained him from intimating, even to his dearest friends, that he wished to be again Minister. But he thought it strange, almost ungrateful, that his wish had not been divined, that it had not been anticipated, by one whom he regarded as his deputy.

Addington, on the other hand, was by no means inclined to descend from his high position. He was, indeed, under a delusion much resembling that of Abou Hassan in the Arabian tale. His brain was turned by his short and unreal caliphate. He took his elevation quite seriously, attributed it to his own merit, and considered himself as one of the great triumvirate of English statesmen, as worthy to make a third with Pitt and Fox.

Such being the feelings of the late Minister and of the present Minister, a rupture was inevitable ; and there was no want of persons bent on making that

rupture speedy and violent. Some of these persons wounded Addington's pride by representing him as a lackey, sent to keep a place on the Treasury bench till his master should find it convenient to come. Others took every opportunity of praising him at Pitt's expense. Pitt had waged a long, a bloody, a costly, an unsuccessful war. Addington had made peace. Pitt had suspended the constitutional liberties of Englishmen. Under Addington those liberties were again enjoyed. Pitt had wasted the public resources. Addington was carefully nursing them. It was sometimes but too evident that these compliments were not unpleasing to Addington. Pitt became cold and reserved. During many months he remained at a distance from London. Meanwhile his most intimate friends, in spite of his declarations that he made no complaint, and that he had no wish for office, exerted themselves to effect a change of ministry. His favorite disciple, George Canning, young, ardent, ambitious, with great powers and great virtues, but with a temper too restless and a wit too satirical for his own happiness, was indefatigable. He spoke ; he wrote ; he intrigued ; he tried to induce a large number of the supporters of the government to sign a round-robin desiring a change : he made game of Addington, and of Addington's relations, in a succession of lively pasquinades. The Minister's partisans retorted with equal acrimony, if not with equal vivacity. Pitt could keep out of the affray only by keeping out of politics altogether ; and this it soon became impossible for him to do. Had Napoleon, content with the first place among the sovereigns of the Continent, and with a military reputation surpassing that of Marlborough or of Turenne, devoted himself to the noble

task of making France happy by mild administration and wise legislation, our country might have long continued to tolerate a government of fair intentions and feeble abilities. Unhappily, the treaty of Amiens had scarcely been signed, when the restless ambition and the insupportable insolence of the First Consul convinced the great body of the English people that the peace, so eagerly welcomed, was only a precarious armistice. As it became clearer and clearer that a war for the dignity, the independence, the very existence, of the nation was at hand, men looked with increasing uneasiness on the weak and languid cabinet which would have to contend against an enemy who united more than the power of Lewis the Great to more than the genius of Frederic the Great. It is true that Addington might easily have been a better War Minister than Pitt, and could not possibly have been a worse. But Pitt had cast a spell on the public mind. The eloquence, the judgment, the calm and disdainful firmness, which he had during many years displayed in Parliament, deluded the world into the belief that he must be eminently qualified to superintend every department of politics ; and they imagined, even after the miserable failures of Dunkirk, of Quiberon, and of the Helder, that he was the only statesman who could cope with Bonaparte. This feeling was nowhere stronger than among Addington's own colleagues. The pressure put on him was so strong that he could not help yielding to it ; yet, even in yielding, he showed how far he was from knowing his own place. His first proposition was that some insignificant nobleman should be First Lord of the Treasury and nominal head of the administration, and that the real power should be di-

vided between Pitt and himself, who were to be Secretaries of State. Pitt, as might have been expected, refused even to discuss such a scheme, and talked of it with bitter mirth. "Which secretaryship was offered to you?" his friend Wilberforce asked. "Really," said Pitt, "I had not the curiosity to inquire." Addington was frightened into bidding higher. He offered to resign the Treasury to Pitt, on condition that there should be no extensive change in the government. But Pitt would listen to no such terms. Then came a dispute such as often arises after negotiations orally conducted, even when the negotiators are men of strict honor. Pitt gave one account of what had passed; Addington gave another: and, though the discrepancies were not such as necessarily implied any intentional violation of truth on either side, both were greatly exasperated.

Meanwhile the quarrel with the First Consul had come to a crisis. On the sixteenth of May, 1803, the King sent a message calling on the House of Commons to support him in withstanding the ambitious and encroaching policy of France; and, on the twenty-second, the House took the message into consideration.

Pitt had now been living many months in retirement. There had been a general election since he had spoken in Parliament; and there were two hundred members who had never heard him. It was known that on this occasion he would be in his place; and curiosity was wound up to the highest point. Unfortunately, the short-hand writers were, in consequence of some mistake, shut out on that day from the gallery, so that the newspapers contained only a very meagre report of the proceedings. But several accounts of what passed are

extant ; and of those accounts the most interesting is contained in an unpublished letter, written by a very young member, John William Ward, afterwards Earl of Dudley. When Pitt rose, he was received with loud cheering. At every pause in his speech there was a burst of applause. The peroration is said to have been one of the most animated and magnificent ever heard in Parliament. " Pitt's speech," Fox wrote a few days later, " was admired very much, and very justly. I think it was the best he ever made in that style." The debate was adjourned ; and on the second night Fox replied in an oration which, as the most zealous Pittites were forced to acknowledge, left the palm of eloquence doubtful. Addington made a pitiable appearance between the two great rivals ; and it was observed that Pitt, while exhorting the Commons to stand resolutely by the executive government against France, said not a word indicating esteem or friendship for the Prime-minister.

War was speedily declared. The First Consul threatened to invade England at the head of the conquerors of Belgium and Italy, and formed a great camp near the Straits of Dover. On the other side of those Straits, the whole population of our island was ready to rise up as one man in defence of the soil. At this conjuncture, as at some other great conjunctures in our history—the conjuncture of 1600, for example, and the conjuncture of 1688—there was a general disposition among honest and patriotic men to forget old quarrels, and to regard as a friend every person who was ready, in the existing emergency, to do his part towards the saving of the State. A coalition of all the first men in the country would, at that moment, have been as popular as the

coalition of 1783 had been unpopular. Alone in the kingdom the King looked with perfect complacency on a cabinet in which no man superior to himself in genius was to be found, and was so far from being willing to admit all his ablest subjects to office that he was bent on excluding them all.

A few months passed before the different parties which agreed in regarding the government with dislike and contempt came to an understanding with each other. But in the spring of 1804 it became evident that the weakest of ministries would have to defend itself against the strongest of oppositions—an opposition made up of three oppositions—each of which would, separately, have been formidable from ability, and which, when united, were also formidable from number. The party which had opposed the peace, headed by Grenville and Windham, and the party which had opposed the renewal of the war, headed by Fox, concurred in thinking that the men now in power were incapable of either making a good peace or waging a vigorous war. Pitt had, in 1802, spoken for peace against the party of Grenville, and had, in 1803, spoken for war against the party of Fox. But of the capacity of the cabinet, and especially of its chief, for the conduct of great affairs, he thought as meanly as either Fox or Grenville. Questions were easily found on which all the enemies of the government could act cordially together. The unfortunate First Lord of the Treasury, who had, during the earlier months of his administration, been supported by Pitt on one side, and by Fox on the other, now had to answer Pitt, and to be answered by Fox. Two sharp debates, followed by close divisions, made him weary of his post. It was

known, too, that the Upper House was even more hostile to him than the Lower; that the Scotch representative peers wavered; that there were signs of mutiny among the bishops. In the cabinet itself there was discord, and, worse than discord, treachery. It was necessary to give way: the ministry was dissolved; and the task of forming a government was intrusted to Pitt.

Pitt was of opinion that there was now an opportunity, such as had never before offered itself, and such as might never offer itself again, of uniting in the public service, on honorable terms, all the eminent talents of the kingdom. The passions to which the French Revolution had given birth were extinct. The madness of the innovator and the madness of the alarmist had alike had their day. Jacobinism and Anti-Jacobinism had gone out of fashion together. The most liberal statesman did not think that season propitious for schemes of parliamentary reform; and the most conservative statesman could not pretend that there was any occasion for gagging-bills and suspensions of the Habeas Corpus Act. The great struggle for independence and national honor occupied all minds; and those who were agreed as to the duty of maintaining that struggle with vigor might well postpone to a more convenient time all disputes about matters comparatively unimportant. Strongly impressed by these considerations, Pitt wished to form a ministry including all the first men in the country. The Treasury he reserved for himself; and to Fox he proposed to assign a share of power little inferior to his own.

The plan was excellent; but the King would not hear of it. Dull, obstinate, unforgiving, and, at that time, half mad, he positively refused to admit Fox

into his service. Anybody else, even men who had gone as far as Fox, or further than Fox, in what his Majesty considered as Jacobinism—Sheridan, Grey, Erskine—should be graciously received; but Fox never. During several hours Pitt labored in vain to reason down this senseless antipathy. That he was perfectly sincere there can be no doubt: but it was not enough to be sincere; he should have been resolute. Had he declared himself determined not to take office without Fox, the royal obstinacy would have given way, as it gave way, a few months later, when opposed to the immutable resolution of Lord Grenville. In an evil hour, Pitt yielded. He flattered himself with the hope that, though he consented to forego the aid of his illustrious rival, there would still remain ample materials for the formation of an efficient ministry. That hope was cruelly disappointed. Fox entreated his friends to leave personal considerations out of the question, and declared that he would support, with the utmost cordiality, an efficient and patriotic ministry from which he should be himself excluded. Not only his friends, however, but Grenville, and Grenville's adherents, answered, with one voice, that the question was not personal, that a great constitutional principle was at stake, and that they would not take office while a man eminently qualified to render service to the commonwealth was placed under a ban merely because he was disliked at court. All that was left to Pitt was to construct a government out of the wreck of Addington's feeble administration. The small circle of his personal retainers furnished him with a very few useful assistants, particularly Dundas (who had been created Viscount Melville), Lord Harrowby, and Canning.

Such was the inauspicious manner in which Pitt entered on his second administration. The whole history of that administration was of a piece with the commencement. Almost every month brought some new disaster or disgrace. To the war with France was soon added a war with Spain. The opponents of the Minister were numerous, able, and active. His most useful coadjutors were soon lost. Sickness deprived him of the help of Lord Harrowby. It was discovered that Lord Melville had been guilty of highly culpable laxity in transactions relating to public money. He was censured by the House of Commons, driven from office, ejected from the Privy Council, and impeached of high crimes and misdemeanors. The blow fell heavy on Pitt. It gave him, he said in Parliament, a deep pang; and, as he uttered the word pang, his lip quivered, his voice shook, he paused, and his hearers thought that he was about to burst into tears. Such tears shed by Eldon would have moved nothing but laughter. Shed by the warm-hearted and open-hearted Fox, they would have moved sympathy, but would have caused no surprise. But a tear from Pitt would have been something portentous. He suppressed his emotion, however, and proceeded with his usual majestic self-possession.

His difficulties compelled him to resort to various expedients. At one time Addington was persuaded to accept office with a peerage; but he brought no additional strength to the government. Though he went through the form of reconciliation, it was impossible for him to forget the past. While he remained in place he was jealous and punctilious, and he soon retired again. At another time Pitt renewed his efforts to

overcome his master's aversion to Fox; and it was rumored that the King's obstinacy was gradually giving way. But, meanwhile, it was impossible for the Minister to conceal from the public eye the decay of his health, and the constant anxiety which gnawed at his heart. His sleep was broken. His food ceased to nourish him. All who passed him in the Park, all who had interviews with him in Downing Street, saw misery written in his face. The peculiar look which he wore during the last months of his life was often pathetically described by Wilberforce, who used to call it the Austerlitz look.

Still the vigor of Pitt's intellectual faculties, and the intrepid haughtiness of his spirit, remained unaltered. He had staked everything on a great venture. He had succeeded in forming another mighty coalition against the French ascendency. The united forces of Austria, Russia, and England might, he hoped, oppose an insurmountable barrier to the ambition of the common enemy. But the genius and energy of Napoleon prevailed. While the English troops were preparing to embark for Germany, while the Russian troops were slowly coming up from Poland, he, with rapidity unprecedented in modern war, moved a hundred thousand men from the shores of the ocean to the Black Forest, and compelled the great Austrian army to surrender at Ulm. To the first faint rumors of this calamity Pitt would give no credit. He was irritated by the alarms of those around him. "Do not believe a word of it," he said: "it is all a fiction." The next day he received a Dutch newspaper containing the capitulation. He knew no Dutch. It was Sunday; and the public offices were shut. He carried the paper to Lord Malmesbury,

who had been Minister in Holland ; and Lord Malmesbury translated it. Pitt tried to bear up ; but the shock was too great ; and he went away with death in his face.

The news of the battle of Trafalgar arrived four days later, and seemed for a moment to revive him. Forty-eight hours after that most glorious and most mournful of victories had been announced to the country came the Lord Mayor's Day ; and Pitt dined at Guildhall. His popularity had declined. But on this occasion the multitude, greatly excited by the recent tidings, welcomed him enthusiastically, took off his horses in Cheapside, and drew his carriage up King Street. When his health was drunk, he returned thanks in two or three of those stately sentences of which he had a boundless command. Several of those who heard him laid up his words in their hearts ; for they were the last words that he ever uttered in public : " Let us hope that England, having saved herself by her energy, may save Europe by her example."

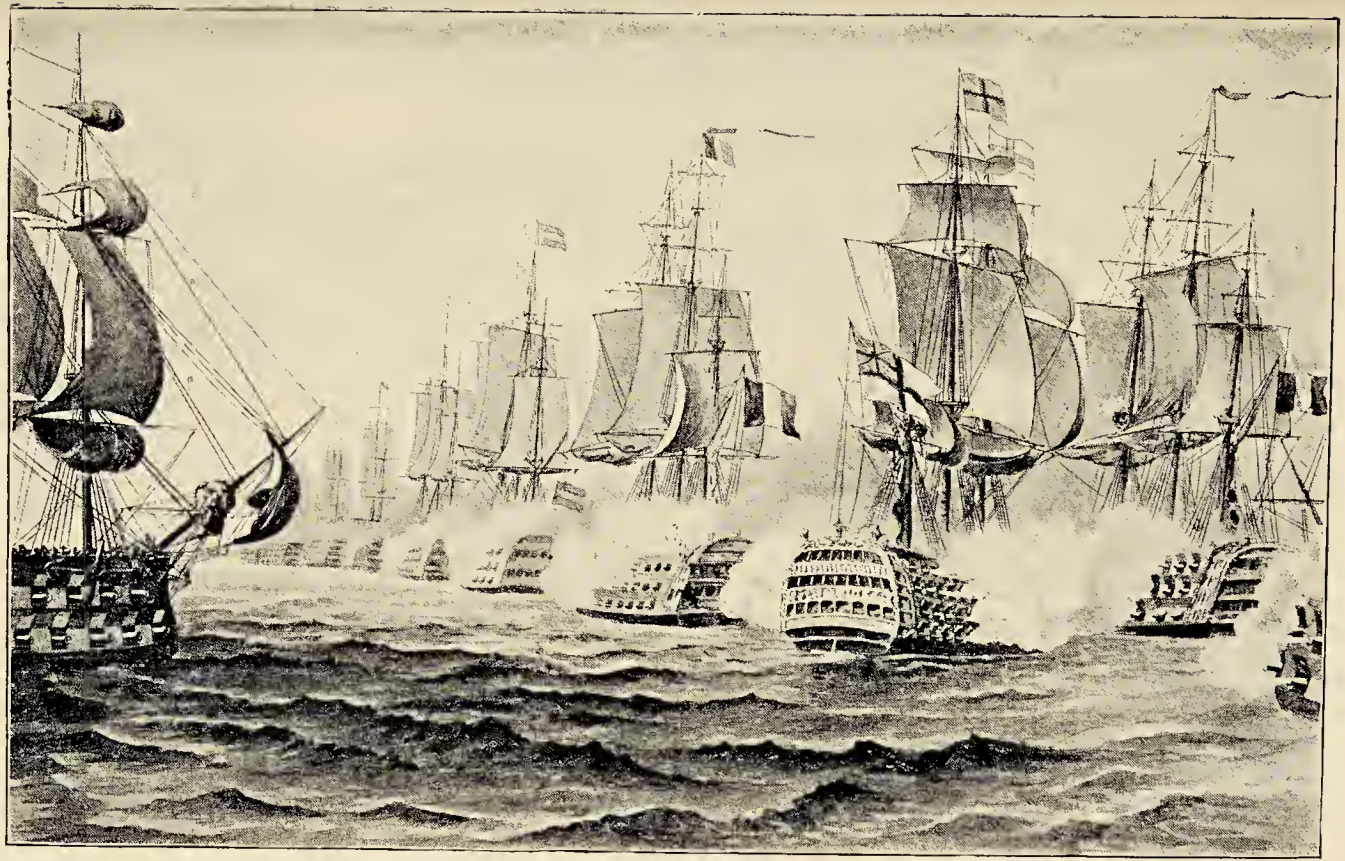
This was but a momentary rally. Austerlitz soon completed what Ulm had begun. Early in December, Pitt had retired to Bath, in the hope that he might there gather strength for the approaching session. While he was languishing there on his sofa arrived the news that a decisive battle had been fought and lost in Moravia ; that the coalition was dissolved ; that the Continent was at the feet of France. He sank down under the blow. Ten days later, he was so emaciated that his most intimate friends hardly knew him. He came up from Bath by slow journeys, and on the eleventh of January, 1806, reached his villa at Putney. Parliament was to meet on the twenty-first. On the twentieth

was to be the parliamentary dinner at the house of the First Lord of the Treasury in Downing Street ; and the cards were already issued. But the days of the great Minister were numbered. The only chance for his life—and that a very slight chance—was, that he should resign his office, and pass some months in profound repose. His colleagues paid him very short visits, and carefully avoided political conversation. But his spirit, long accustomed to dominion, could not, even in that extremity, relinquish hopes which everybody but himself perceived to be vain. On the day on which he was carried into his bedroom at Putney, the Marquess Wellesley, whom he had long loved, whom he had sent to govern India, and whose administration had been eminently able, energetic, and successful, arrived in London after an absence of eight years. The friends saw each other once more. There was an affectionate meeting and a last parting. That it was a last parting Pitt did not seem to be aware. He fancied himself to be recovering, talked on various subjects cheerfully, and with an unclouded mind, and pronounced a warm and discerning eulogium on the Marquess's brother Arthur. "I never," he said, "met with any military man with whom it was so satisfactory to converse." The excitement and exertion of this interview were too much for the sick man. He fainted away; and Lord Wellesley left the house, convinced that the close was fast approaching.

And now members of Parliament were fast coming up to London. The chiefs of the Opposition met for the purpose of considering the course to be taken on the first day of the session. It was easy to guess what would be the language of the King's speech, and of the

The Battle of Trafalgar, 1805.

From the painting by C. Stanfield.



address which would be moved in answer to that speech. An amendment condemning the policy of the government had been prepared, and was to have been proposed in the House of Commons by Lord Henry Petty, a young nobleman who had already won for himself that place in the esteem of his country which, after the lapse of more than half a century, he still retains. He was unwilling, however, to come forward as the accuser of one who was incapable of defending himself. Lord Grenville, who had been informed of Pitt's state by Lord Wellesley, and had been deeply affected by it, earnestly recommended forbearance; and Fox, with characteristic generosity and good nature, gave his voice against attacking his now helpless rival. "Sunt lacrymæ rerum," he said, "et mentem mortalia tangunt." On the first day, therefore, there was no debate. It was rumored that evening that Pitt was better. But on the following morning his physicians pronounced that there were no hopes. The commanding faculties, of which he had been too proud, were beginning to fail. His old tutor and friend the Bishop of Lincoln informed him of his danger, and gave such religious advice and consolation as a confused and obscured mind could receive. Stories were told of devout sentiments fervently uttered by the dying man. But these stories found no credit with anybody who knew him. Wilberforce pronounced it impossible that they could be true. "Pitt," he added, "was a man who always said less than he thought on such topics." It was asserted in many after-dinner speeches, Grub Street elegies, and academic prize poems and prize declamations that the great Minister died exclaiming, "Oh, my country!" This is a fable; but it is true that the

last words which he uttered, while he knew what he said, were broken exclamations about the alarming state of public affairs. He ceased to breathe on the morning of the twenty-third of January, 1806, the twenty-fifth anniversary of the day on which he first took his seat in Parliament. He was in his forty-seventh year, and had been, during near nineteen years, First Lord of the Treasury, and undisputed chief of the administration. Since parliamentary government was established in England, no English statesman has held supreme power so long. Walpole, it is true, was First Lord of the Treasury during more than twenty years ; but it was not till Walpole had been some time First Lord of the Treasury that he could be properly called Prime-minister.

It was moved in the House of Commons that Pitt should be honored with a public funeral and a monument. The motion was opposed by Fox in a speech which deserves to be studied as a model of good taste and good feeling. The task was the most invidious that ever an orator undertook; but it was performed with a humanity and delicacy which were warmly acknowledged by the mourning friends of him who was gone. The motion was carried by two hundred and eighty-eight votes to eighty-nine.

The twenty-second of February was fixed for the funeral. The corpse, having lain in state during two days in the Painted Chamber, was borne with great pomp to the northern transept of the Abbey. A splendid train of princes, nobles, bishops, and privy-councillors followed. The grave of Pitt had been made near to the spot where his great father lay, near also to the spot where his great rival was soon to lie.

The sadness of the assistants was beyond that of ordinary mourners ; for he whom they were committing to the dust had died of sorrows and anxieties of which none of the survivors could be altogether without a share. Wilberforce, who carried the banner before the hearse, described the awful ceremony with deep feeling. As the coffin descended into the earth, he said, the eagle face of Chatham from above seemed to look down with consternation into the dark house which was receiving all that remained of so much power and glory.

All parties in the House of Commons readily concurred in voting forty thousand pounds to satisfy the demands of Pitt's creditors. Some of his admirers seemed to consider the magnitude of his embarrassments as a circumstance highly honorable to him ; but men of sense will probably be of a different opinion. It is far better, no doubt, that a great minister should carry his contempt of money to excess than that he should contaminate his hands with unlawful gain. But it is neither right nor becoming in a man to whom the public has given an income more than sufficient for his comfort and dignity to bequeath to that public a great debt, the effect of mere negligence and profusion. As First Lord of the Treasury and Chancellor of the Exchequer, Pitt never had less than six thousand a year, besides an excellent house. In 1792 he was forced, by his royal master's friendly importunity, to accept for life the office of Warden of the Cinque Ports, with near four thousand a year more. He had neither wife nor child ; he had no needy relations ; he had no expensive tastes ; he had no long election bills. Had he given but a quarter of an hour a week to the regu-

lation of his household, he would have kept his expenditure within bounds. Or, if he could not spare even a quarter of an hour a week for that purpose, he had numerous friends, excellent men of business, who would have been proud to act as his stewards. One of those friends, the chief of a great commercial house in the city, made an attempt to put the establishment in Downing Street to rights ; but in vain. He found that the waste of the servants' hall was almost fabulous. The quantity of butcher's meat charged in the bills was nine hundred-weight a week. The consumption of poultry, of fish, and of tea was in proportion. The character of Pitt would have stood higher if, with the disinterestedness of Pericles and of De Witt, he had united their dignified frugality.

The memory of Pitt has been assailed, times innumerable, often justly, often unjustly ; but it has suffered much less from his assailants than from his eulogists. For during many years his name was the rallying-cry of a class of men with whom, at one of those terrible conjunctures which confound all ordinary distinctions, he was accidentally and temporarily connected, but to whom, on almost all great questions of principle, he was diametrically opposed. The haters of parliamentary reform called themselves Pittites, not choosing to remember that Pitt made three motions for parliamentary reform, and that, though he thought that such a reform could not safely be made while the passions excited by the French Revolution were raging, he never uttered a word indicating that he should not be prepared, at a more convenient season, to bring the question forward a fourth time. The toast of Protestant ascendency was drunk on Pitt's birthday by a set of

Pittites who could not but be aware that Pitt had resigned his office because he could not carry Catholic emancipation. The defenders of the Test Act called themselves Pittites, though they could not be ignorant that Pitt had laid before George the Third unanswerable reasons for abolishing the Test Act. The enemies of free-trade called themselves Pittites, though Pitt was far more deeply imbued with the doctrines of Adam Smith than either Fox or Grey. The very negro-drivers invoked the name of Pitt, whose eloquence was never more conspicuously displayed than when he spoke of the wrongs of the negro. This mythical Pitt, who resembles the genuine Pitt as little as the Charlemagne of Ariosto resembles the Charlemagne of Eginhard, has had his day. History will vindicate the real man from calumny disguised under the semblance of adulation, and will exhibit him as what he was, a minister of great talents, honest intentions, and liberal opinions, pre-eminently qualified, intellectually and morally, for the part of a parliamentary leader, and capable of administering, with prudence and moderation, the government of a prosperous and tranquil country, but unequal to surprising and terrible emergencies, and liable, in such emergencies, to err grievously both on the side of weakness and on the side of violence.

INTRODUCTORY REPORT

UPON THE

INDIAN PENAL CODE

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TO THE RIGHT HONORABLE GEORGE LORD AUCKLAND, C.G.C.B., GOVERNOR-GENERAL OF INDIA IN COUNCIL.

My Lord,—The Penal Code which, according to the orders of government of the 15th of June, 1835, we had the honor to lay before your Lordship in Council on the 2d of May last has now been printed under our superintendence, and has, as well as the Notes, been carefully revised and corrected by us while in the press.

The time which has been employed in framing this body of law will not be thought long by any person who is acquainted with the nature of the labor which such works require, and with the history of other works of the same kind. We should, however, have been able to lay it before your Lordship in Council many months earlier but for a succession of unfortunate circumstances against which it was impossible to provide. During a great part of the year 1836, the Commission

was rendered almost entirely inefficient by the ill-health of a majority of the members ; and we were altogether deprived of the valuable services of our colleague, Mr. Cameron, at the very time when those services were most needed.

It is hardly necessary for us to entreat your Lordship in Council to examine with candor the work which we now submit to you. To the ignorant and inexperienced, the task in which we have been engaged may appear easy and simple. But the members of the Indian government are doubtless well aware that it is among the most difficult tasks in which the human mind can be employed ; that persons placed in circumstances far more favorable than ours have attempted it with very doubtful success ; that the best codes extant, if malignantly criticised, will be found to furnish matter for censure in every page ; that the most copious and precise of human languages furnish but a very imperfect machinery to the legislator ; that, in a work so extensive and complicated as that on which we have been employed, there will inevitably be, in spite of the most anxious care, some omissions and some inconsistencies ; and that we have done as much as could reasonably be expected from us if we have furnished the government with that which may, by suggestions from experienced and judicious persons, be improved into a good code.

Your Lordship in Council will be prepared to find in this performance those defects which must necessarily be found in the first portion of a code. Such is the relation which exists between the different parts of the law that no part can be brought to perfection while the other parts remain rude. The penal code cannot be

clear and explicit while the substantive civil law and the law of procedure are dark and confused. While the rights of individuals and the powers of public functionaries are uncertain, it cannot always be certain whether those rights have been attacked or those powers exceeded.

Your Lordship in Council will perceive that the system of penal law which we propose is not a digest of any existing system, and that no existing system has furnished us even with a groundwork. We trust that your Lordship in Council will not hence infer that we have neglected to inquire, as we are commanded to do by Parliament, into the present state of that part of the law, or that in other parts of our labors we are likely to recommend unsparing innovation, and the entire sweeping-away of ancient usages. We are perfectly aware of the value of that sanction which long prescription and national feeling give to institutions. We are perfectly aware that law-givers ought not to disregard even the unreasonable prejudices of those for whom they legislate. So sensible are we of the importance of these considerations that, though there are not the same objections to innovation in penal legislation as to innovation affecting vested rights of property, yet, if we had found India in possession of a system of criminal law which the people regarded with partiality, we should have been inclined rather to ascertain it, to digest it, and moderately to correct it than to propose a system fundamentally different.

But it appears to us that none of the systems of penal law established in British India has any claim to our attention, except what it may derive from its own intrinsic excellence. All those systems are foreign. All

were introduced by conquerors differing in race, manners, language, and religion from the great mass of the people. The criminal law of the Hindoos was long ago superseded, through the greater part of the territories now subject to the Company, by that of the Mahometans, and is certainly the last system of criminal law which an enlightened and humane government would be disposed to revive. The Mahometan criminal law has in its turn been superseded, to a great extent, by the British Regulations. Indeed, in the territories subject to the Presidency of Bombay, the criminal law of the Mahometans, as well as that of the Hindoos, has been altogether discarded, except in one particular class of cases ; and even in such cases it is not imperative on the judge to pay any attention to it. The British Regulations, having been made by three different legislatures, contain, as might be expected, very different provisions. Thus, in Bengal, serious forgeries are punishable with imprisonment for a term double of the term fixed for perjury;[1] in the Bombay Presidency, on the contrary, perjury is punishable with imprisonment for a term double of the term fixed for the most aggravated forgeries ;[2] in the Madras Presidency, the two offences are exactly on the same footing.[3] In the Bombay Presidency, the escape of a convict is punished with imprisonment for a term double of the term assigned to that offence in the two other presidencies ;[4]

[1] Bengal Regulation XVII. of 1817, section ix.

[2] Bombay Regulation XIV. of 1827, sections xvi. and xvii.

[3] Madras Regulation VI. of 1811, section iii.

[4] Bombay Regulation XIV. of 1827, section xxiv., and Regulation V. of 1831, section i. Bengal Regulation XII. of 1818, section v., clause 1. Madras Regulation VI. of 1822, section v., clause 2.

while a coiner is punished with little more than half the imprisonment assigned to his offence in the other two presidencies.[1] In Bengal, the purchasing of regimental necessaries from soldiers is not punishable except at Calcutta, and is there punishable with a fine of only fifty rupees.[2] In the Madras Presidency, it is punishable with a fine of forty rupees.[3] In the Bombay Presidency, it is punishable with imprisonment for four years.[4] In Bengal, the vending of stamps without a license is punishable with a moderate fine ; and the purchasing of stamps from a person not licensed to sell them is not punished at all.[5] In the Madras Presidency, the vendor is punished with a short imprisonment ; but there also the purchaser is not punished at all.[6] In the Bombay Presidency, both the vendor and the purchaser are liable to imprisonment for five years, and to flogging.[7]

Thus widely do the systems of penal law now established in British India differ from each other ; nor can we recommend any one of the three systems as furnishing even the rudiments of a good code. The penal law of Bengal and of the Madras Presidency is, in fact, Mahometan law, which has gradually been distorted to such an extent as to deprive it of all title to the religious

[1] Bombay Regulation XIV. of 1827, section xviii. Bengal Regulation XVII. of 1817, section ix. Madras Regulation II. of 1822, section v.

[2] Calcutta Rule, Ordinance and Regulation, passed 21st August, registered 13th Nov., 1821.

[3] Madras Regulation XIV. of 1832, section ii., clause 1.

[4] Bombay Regulation XXII. of 1827, section xix.

[5] Bengal Regulation X. of 1829, section ix., clause 2.

[6] Madras Regulation XIII. of 1816, section x., clause 10.

[7] Bombay Regulation XVIII. of 1827, section ix., clause 1.

veneration of Mahometans, yet which retains enough of its original peculiarities to perplex and encumber the administration of justice. In substance it now differs at least as widely from the Mahometan penal law as the penal law of England differs from the penal law of France. Yet technical terms and nice distinctions borrowed from the Mahometan law are still retained. Nothing is more usual than for the courts to ask the law officers what punishment the Mahometan law prescribes in a hypothetical case, and then to inflict that punishment on a person who is not within that hypothetical case, and who by the Mahometan law would be liable either to a different punishment or to no punishment. We by no means presume to condemn the policy which led the British government to retain, and gradually to modify, the system of criminal jurisprudence which it found established in these provinces. But it is evident that a body of law thus formed must, considered merely as a body of law, be defective and inconvenient.

The penal law of the Bombay Presidency is all contained in the Regulations ; and is almost all to be found in one extensive Regulation.[1] The government of that presidency appears to have been fully sensible of the great advantage which must arise from placing the whole law in a written form before those who are to administer and those who are to obey it ; and, whatever may be the imperfections of the execution, high praise is due to the design. The course which we recommend to the government, and which some persons may perhaps consider as too daring, has already been

[1] Bombay Regulation XIV. of 1827.

Macaulay's residence in Calcutta.

Redrawn from an old print.

tried at Bombay, and has not produced any of those effects which timid minds are disposed to anticipate even from the most reasonable and useful innovations. Throughout a large territory, inhabited, to a great extent, by a newly conquered population, all the ancient systems of penal law were at once superseded by a code, and this without the smallest sign of discontent among the people.

It would have given us great pleasure to have found that code such as we could with propriety have taken as the groundwork of a code for all India. But we regret to say that the penal law of the Bombay Presidency has over the penal law of the other presidencies no superiority, except that of being digested. In framing it, the principles according to which crimes ought to be classified and punishments apportioned have been less regarded than in the legislation of Bengal and Madras. The secret destroying of any property, though it may not be worth a single rupee, is punishable with imprisonment for five years.[1] Unlawful confinement, though it may last only for a quarter of an hour, is punishable with imprisonment for five years.[2] Every conspiracy to injure or impoverish any person is punishable with imprisonment for ten years ;[3] so that a man who engages in a design as atrocious as the Gunpowder Plot, and one who is party to a scheme for putting off an unsound horse on a purchaser, are classed together, and are liable to exactly the same punishment. Under this law, if two men concert a petty theft, and afterwards repent of their purpose and aban-

[1] Regulation XIV. of 1827, section xlii., clause 2.

[2] Regulation XIV. of 1827, section xxxiii., clause 1.

[3] Regulation XVII. of 1828.

don it, each of them is liable to twenty times the punishment of the actual theft.[1] All assaults which cause a severe shock to the mental feelings of the sufferer are classed with the atrocious crime of rape, and are liable to the punishment of rape ; that is, if the courts shall think fit, to imprisonment for fourteen years.[2] The breaking of the window of a house, the dashing to pieces a china cup within a house, the riding over a field of grain in hunting, are classed with the crime of arson, and are punishable, incredible as it may appear, with death. The following is the law on the subject, "Any person who shall wilfully and wrongfully set fire to or otherwise damage or destroy any part of a dwelling-house or building appertaining thereto, or property contained in a dwelling-house, or building or enclosure appertaining thereto, or crops standing or reaped in the field, shall be liable to any of the punishments specified in section iii. of this Regulation."[3] The section to which reference is made contains a list of the punishments authorized by the Bombay code, and at the head of that list stands "Death."

But these errors, the effects probably of inadvertence, are not, in our opinion, the most serious faults of the penal code of Bombay. That code contains enactments which it is impossible to excuse on the ground of inadvertence—enactments the language of which shows that when they were framed their whole effect was fully understood, and which appear to us to be directly opposed to the first principles of penal law. One of the first principles of penal law is this, that a person who

[1] Regulation XIV. of 1827, section xxxix.
[2] Regulation XIV. of 1827, section xxix., clause 1.
[3] Regulation XIV. of 1827, section xlii., clause 1.

merely conceals a crime after it has been committed ought not to be punished as if he had himself committed it. By the Bombay code, the concealment after the fact of murder is punishable as murder ; the concealment after the fact of gang-robbery is punishable as gang-robbery; [1] and this, though the concealment after the fact of the most cruel mutilations, and of the most atrocious robberies committed by not more than four persons, is not punished at all.

If there be any distinction which more than any other it behooves the legislator to bear constantly in mind, it is the distinction between harm voluntarily caused and harm involuntarily caused. Negligence, indeed, often causes mischief, and often deserves punishment. But to punish a man whose negligence has produced some evil which he never contemplated as if he had produced the same evil knowingly and with deliberate malice is a course which, as far as we are aware, no jurist has ever recommended in theory, and which we are confident that no society would tolerate in practice. It is, however, provided by the Bombay code that the " unintentional commission of any act punishable by that code shall be punished according to the court's judgment of the culpable disregard of injury to others evinced by the person committing the said act ; but the punishment for such unintentional commission shall not exceed that prescribed for the offence committed." [2]

We have said enough to show that it is owing not at all to the law, but solely to the discretion and humanity of the judges, that great cruelty and injustice is not

[1] Regulation XIV. of 1827, section i., clause 1.

[2] Regulation XIV. of 1827, section i., clause 3.

daily perpetrated in the Criminal Courts of the Bombay Presidency.

Many important classes of offences are altogether unnoticed by the Bombay code ; and this omission appears to us to be very ill supplied by one sweeping clause, which arms the courts with almost unlimited power to punish as they think fit offences against morality, or against the peace and good order of society, if those offences are penal by the religious law of the offender.[1] This clause does not apply to people who profess a religion with which a system of penal jurisprudence is not inseparably connected. And from this state of the law some singular consequences follow. For example, a Mahometan is punishable for adultery: a Christian is at liberty to commit adultery with impunity.

Such is the state of the penal law in the Mofussil. In the mean time the population which lives within the local jurisdiction of the courts established by the Royal Charters is subject to the English Criminal Law, that is to say, to a very artificial and complicated system—to a foreign system—to a system which was framed without the smallest reference to India—to a system which, even in the country for which it was framed, is generally considered as requiring extensive reform—to a system, finally, which has just been pronounced by a Commission composed of able and learned English lawyers to be so defective that it can be reformed only by being entirely taken to pieces and reconstructed.[2]

[1] Regulation XIV. of 1827, section i., clause 1.

[2] Letter to Lord John Russell from the Commissioners appointed to inquire into the state of the Criminal Law, dated 19th January, 1837.

Under these circumstances we have not thought it desirable to take as the groundwork of the code any of the systems of law now in force in any part of India. We have, indeed, to the best of our ability, compared the code with all those systems, and we have taken suggestions from all ; but we have not adopted a single provision merely because it formed a part of any of those systems. We have also compared our work with the most celebrated systems of Western jurisprudence, as far as the very scanty means of information which were accessible to us in this country enabled us to do so. We have derived much valuable assistance from the French code, and from the decisions of the French courts of justice on questions touching the construction of that code. We have derived assistance still more valuable from the code of Lousiana, prepared by the late Mr. Livingston. We are the more desirous to acknowledge our obligations to that eminent jurist, because we have found ourselves under the necessity of combating his opinions on some important questions.

The reasons for those provisions which appear to us to require explanation or defence will be found appended to the Code in the form of notes. Should your Lordship in Council wish for fuller information as to the considerations by which we have been guided in framing any part of the law, we shall be ready to afford it.

One peculiarity in the manner in which this code is framed will immediately strike your Lordship in Council —we mean the copious use of illustrations. These illustrations will, we trust, greatly facilitate the understanding of the law, and will at the same time often serve as a defence of the law. In our definitions we

have repeatedly found ourselves under the necessity of sacrificing neatness and perspicuity to precision, and of using harsh expressions because we could find no other expressions which would convey our whole meaning, and no more than our whole meaning. Such definitions standing by themselves might repel and perplex the reader, and would perhaps be fully comprehended only by a few students after long application. Yet such definitions are found, and must be found, in every system of law which aims at accuracy. A legislator may, if he thinks fit, avoid such definitions, and by avoiding them he will give a smoother and more attractive appearance to his workmanship ; but in that case he flinches from a duty which he ought to perform, and which somebody must perform. If this necessary but most disagreeable work be not performed by the law-giver once for all, it must be constantly performed in a rude and imperfect manner by every judge in the empire, and will probably be performed by no two judges in the same way. We have therefore thought it right not to shrink from the task of framing these unpleasing but indispensable parts of a code. And we hope that when each of these definitions is followed by a collection of cases falling under it, and of cases which, though at first sight they appear to fall under it, do not really fall under it, the definition and the reasons which led to the adoption of it will be readily understood. The illustrations will lead the mind of the student through the same steps by which the minds of those who framed the law proceeded, and may sometimes show him that a phrase which may have struck him as uncouth, or a distinction which he may have thought idle, was deliberately adopted for the purpose

of including or excluding a large class of important cases. In the study of geometry it is constantly found that a theorem which, read by itself, conveyed no distinct meaning to the mind, becomes perfectly clear as soon as the reader casts his eye over the statement of the individual case taken for the purpose of demonstration. Our illustrations, we trust, will in a similar manner facilitate the study of the law.

There are two things which a legislator should always have in view while he is framing laws ; the one is, that they should be, as far as possible, precise : the other, that they should be easily understood. To unite precision and simplicity in definitions intended to include large classes of things, and to exclude others very similar to many of those which are included, will often be utterly impossible. Under such circumstances it is not easy to say what is the best course. That a law, and especially a penal law, should be drawn in words which convey no meaning to the people who are to obey it, is an evil. On the other hand, a loosely-worded law is no law, and to whatever extent a legislature uses vague expressions, to that extent it abdicates its functions, and resigns the power of making law to the courts of justice.

On the whole, we are inclined to think that the best course is that which we have adopted. We have, in framing our definitions, thought principally of making them precise, and have not shrunk from rugged or intricate phraseology when such phraseology appeared to us to be necessary to precision. If it appeared to us that our language was likely to perplex an ordinary reader, we added as many illustrations as we thought necessary for the purpose of explaining it. The defi-

nitions and enacting clauses contain the whole law. The illustrations make nothing law which would not be law without them. They only exhibit the law in full action, and show what its effects will be on the events of common life.

Thus the code will be at once a statute-book and a collection of decided cases. The decided cases in the code will differ from the decided cases in the English law-books in two most important points. In the first place, our illustrations are never intended to supply any omission in the written law, nor do they ever, in our opinion, put a strain on the written law. They are merely instances of the practical application of the written law to the affairs of mankind. Secondly, they are cases decided not by the judges but by the legislature, by those who make the law, and who must know more certainly than any judge can know what the law is which they mean to make.

The power of construing the law in cases in which there is any real reason to doubt what the law is amounts to the power of making the law. On this ground the Roman jurists maintained that the office of interpreting the law in doubtful matters necessarily belonged to the legislature. The contrary opinion was censured by them with great force of reason, though in language perhaps too bitter and sarcastic for the gravity of a code. "Eorum vanam subtilitatem tam risimus quam corrigendam esse censuimus. Si enim in præsenti leges condere soli imperatori concessum est, et leges interpretari solo dignum imperio esse oportet. Quis legum ænigmata solvere et omnibus aperire idoneus esse videbitur nisi is cui legislatorem esse concessum est? Explosis itaque his ridiculosis ambiguitatibus

tam conditor quam interpres legum solus imperator juste existimabitur." [1]

The decisions on particular cases which we have annexed to the provisions of the code resemble the imperial rescripts in this, that they proceed from the same authority from which the provisions themselves proceed. They differ from the imperial rescripts in this most important circumstance, that they are not made *ex post facto*, that they cannot therefore be made to serve any particular turn, that the persons condemned or absolved by them are purely imaginary persons, and that, therefore, whatever may be thought of the wisdom of any judgment which we have passed, there can be no doubt of its impartiality.

The publication of this collection of cases decided by legislative authority will, we hope, greatly limit the power which the courts of justice possess of putting their own sense on the laws. But we are sensible that neither this collection nor any other can be sufficiently extensive to settle every question which may be raised as to the construction of the code. Such questions will certainly arise, and, unless proper precautions be taken, the decisions on such questions will accumulate till they form a body of law of far greater bulk than that which has been adopted by the legislature. Nor is this the worst. While the judicial system of British India continues to be what it now is, these decisions will render the law not only bulky, but uncertain and contradictory. There are at present eight chief courts subject to the legislative power of your Lordship in Council, four established by Royal Charter, and four which derive their authority from the Company. Every one of

[1] *Cod. Just.*, lib. i., tit. xiv., 12.

these tribunals is perfectly independent of the others. Every one of them is at liberty to put its own construction on the law ; and it is not to be expected that they will always adopt the same construction. Under so inconvenient a system there will inevitably be, in the course of a few years, a large collection of decisions diametrically opposed to each other, and all of equal authority.

How the powers and mutual relations of these courts may be placed on a better footing, and whether it be possible or desirable to have in India a single tribunal empowered to expound the code in the last resort, are questions which must shortly engage the attention of the Law Commission. But whether the present judicial organization be retained or not, it is most desirable that measures should be taken to prevent the written law from being overlaid by an immense weight of comments and decisions. We conceive that it is proper for us, at the time at which we lay before your Lordship in Council the first part of the Indian code, to offer such suggestions as have occurred to us on this important subject.

We do not think it desirable that the Indian legislature should, like the Roman emperors, decide doubtful points of law which have actually been mooted in cases pending before the tribunals. In criminal cases, with which we are now more immediately concerned, we think that the accused party ought always to have the advantage of a doubt on a point of law, if that doubt be entertained after mature consideration by the highest judicial authority, as well as of a doubt on a matter of fact. In civil suits which are actually pending, we think it, on the whole, desirable to leave to the courts

the office of deciding doubtful questions of law which have actually arisen in the course of litigation. But every case in which the construction put by a judge on any part of the code is set aside by any of those tribunals from which at present there is no appeal in India, and every case in which there is a difference of opinion in a court composed of several judges as to the construction of any part of the code, ought to be forthwith reported to the legislature. Every judge of every rank whose duty it is to administer the law as contained in the code should be enjoined to report to his official superiors every doubt which he may entertain as to any question of construction which may have arisen in his court. Of these doubts, all which are not obviously unreasonable ought to be periodically reported by the highest judicial authorities to the legislature. All the questions thus reported to the government might with advantage be referred for examination to the Law Commission, if that Commission should be a permanent body. In some cases it will be found that the law is already sufficiently clear, and that any misconstruction which may have taken place is to be attributed to weakness, carelessness, wrongheadedness or corruption on the part of an individual, and is not likely to occur again. In such cases it will be unnecessary to make any change in the code. Sometimes it will be found that a case has arisen respecting which the code is silent. In such a case it will be proper to supply the omission. Sometimes it may be found that the code is inconsistent with itself. If so, the inconsistency ought to be removed. Sometimes it will be found that the words of the law are not sufficiently precise. In such a case it will be proper to substitute others.

Sometimes it will be found that the language of the law, though it is as precise as the subject admits, is not so clear that a person of ordinary intelligence can see its whole meaning. In these cases it will generally be expedient to add illustrations, such as may distinctly show in what sense the legislature intends the law to be understood, and may render it impossible that the same question, or any similar question, should ever again occasion difference of opinion. In this manner every successive edition of the code will solve all the important questions as to the construction of the code which have arisen since the appearance of the edition immediately preceding. Important questions, particularly questions about which courts of the highest rank have pronounced opposite decisions, ought to be settled without delay ; and no point of law ought to continue to be a doubtful point more than three or four years after it has been mooted in a court of justice. An addition of a very few pages to the code will stand in the place of several volumes of reports, and will be of far more value than such reports, inasmuch as the additions to the code will proceed from the legislature, and will be of unquestionable authority ; whereas the reports would only give the opinions of the judges, which other judges might venture to set aside.

It appears to us also highly desirable that, if the code shall be adopted, all those penal laws which the Indian legislature may from time to time find it necessary to pass should be framed in such a manner as to fit into the code. Their language ought to be that of the code. No word ought to be used in any other sense than that in which it is used in the code. The very part of the code in which the new law is to be inserted

ought to be indicated. If the new law rescinds or modifies any provision of the code, that provision ought to be indicated. In fact, the new law ought, from the day on which it is passed, to be part of the code, and to affect all the other provisions of the code, and to be affected by them as if it were actually a clause of the original code. In the next edition of the code, the new law ought to appear in its proper place.

For reasons which have been fully stated to your Lordship in Council in another communication, we have not inserted in the code any clause declaring to what places and to what classes of persons it shall apply.

Your Lordship in Council will see that we have not proposed to except from the operation of this code any of the ancient sovereign houses of India residing within the Company's territories. Whether any such exception ought to be made is a question which, without a more accurate knowledge than we possess of existing treaties, of the sense in which those treaties have been understood, of the history of negotiations, of the temper and of the power of particular families, and of the feeling of the body of the people toward those families, we could not venture to decide. We will only beg permission most respectfully to observe that every such exception is an evil ; that it is an evil that any man should be above the law ; that it is a still greater evil that the public should be taught to regard as a high and enviable distinction the privilege of being above the law ; that the longer such privileges are suffered to last, the more difficult it is to take them away ; that there can scarcely ever be a fairer opportunity for taking them

away than at the time when the government promulgates a new code binding alike on persons of different races and religions ; and that we greatly doubt whether any consideration, except that of public faith solemnly pledged, deserves to be weighed against the advantages of equal justice.

The peculiar state of public feeling in this country may render it advisable to frame the law of procedure in such a manner that families of high rank may be dispensed, as far as possible, from the necessity of performing acts which are here regarded, however unreasonably, as humiliating. But though it may be proper to make wide distinctions as respects form, there ought in our opinion to be, as respects substance, no distinctions except those which the government is bound by express engagements to make. That a man of rank should be examined with particular ceremonies or in a particular place may, in the present state of Indian society, be highly expedient. But that a man of any rank should be allowed to commit crimes with impunity must in every state of society be most pernicious.

The provisions of the code will be applicable to offences committed by soldiers, as well as to offences committed by other members of the community. But for those purely military offences which soldiers only can commit, we have made no provision. It appears to us desirable that this part of the law should be taken up separately, and we have been given to understand that your Lordship in Council has determined that it shall be so taken up. But we have, as your Lordship in Council will perceive, made provision for punishing persons who, not being themselves sub-

ject to martial law, abet soldiers in the breach of military discipline.

Your Lordship in Council will observe that in many parts of the penal code we have referred to the code of procedure, which as yet is not in existence ; and hence it may possibly be supposed to be our opinion that, till the code of procedure is framed, the penal code cannot come into operation. Such, however, is not our meaning. We conceive that almost the whole of the penal code, such as we now lay it before your Lordship, might be made law, at least in the Mofussil, without any considerable change in the existing rules of procedure. Should your Lordship in Council agree with us in this opinion, we shall be prepared to suggest those changes which it would be necessary immediately to make.

In conclusion, we beg respectfully to suggest that, if your Lordship in Council is disposed to adopt the code which we have framed, it is most desirable that the native population should, with as little delay as possible, be furnished with good versions of it in their own languages. Such versions, in our opinion, can be produced only by the combined labors of enlightened Europeans and natives ; and it is not probable that men competent to execute all the translations which will be required would be found in any single province of India. We are sensible that the difficulty of procuring good translations will be great ; but we believe that the means at the disposal of your Lordship in Council are sufficient to overcome every difficulty ; and we are confident that your Lordship in Council will not grudge anything that may be necessary for the purpose of enabling the people who are placed under your care to

know what that law is according to which they are required to live.

We have the honor to be, my Lord,
Your Lordship's most obedient humble servants,

T. B. Macaulay,
J. M. Macleod,
G. W. Anderson,
F. Millett.

Indian Law Commission,
October 14, 1837.

NOTES

NOTE (A)

ON THE CHAPTER OF PUNISHMENTS

First among the punishments provided for offences by this code stands death. No argument that has been brought to our notice has satisfied us that it would be desirable wholly to dispense with this punishment. But we are convinced that it ought to be very sparingly inflicted, and we propose to employ it only in cases where either murder or the highest offence against the State has been committed.

We are not apprehensive that we shall be thought by many persons to have resorted too frequently to capital punishment; but we think it probable that many, even of those who condemn the English Statute-book as sanguinary, may think that our code errs on the other side. They may be of opinion that gang-robbery, the cruel mutilation of the person, and possibly rape, ought to be punished with death. These are doubtless offences which, if we looked only at their enormity, at the evil which they produce, at the terror which they spread through society, at the depravity which they indicate, we might be inclined to punish

capitally. But atrocious as they are, they cannot, as it appears to us, be placed in the same class with murder. To the great majority of mankind nothing is so dear as life. And we are of opinion that to put robbers, ravishers, and mutilators on the same footing with murderers, is an arrangement which diminishes the security of life.

There is in practice a close connection between murder and most of those offences which come nearest to murder in enormity. Those offences are almost always committed under such circumstances that the offender has it in his power to add murder to his guilt. They are often committed under such circumstances that the offender has a temptation to add murder to his guilt. The same opportunities, the same superiority of force, which enabled a man to rob, to mangle or to ravish, will enable him to go farther, and to despatch his victim. As he has almost always the power to murder, he will often have a strong motive to murder, inasmuch as by murder he may often hope to remove the only witness of the crime which he has already committed. If the punishment of the crime which he has already committed be exactly the same with the punishment of murder, he will have no restraining motive. A law which imprisons for rape and robbery, and hangs for murder, holds out to ravishers and robbers a strong inducement to spare the lives of those whom they have injured. A law which hangs for rape and robbery, and which only hangs for murder, holds out, indeed, if it be rigorously carried into effect, a strong motive to deter men from rape and robbery ; but as soon as a man has ravished or robbed, it holds out to him a strong motive to follow up his crime with a murder.

If murder were punished with something more than simple death ; if the murderer were broken on the wheel or burnt alive, there would not be the same objection to punishing with death those crimes which in atrocity approach nearest to murder. But such a system would be open to other objections so obvious that it is unnecessary to point them out. The highest punishment which we propose is the simple deprivation of life ; and the highest punishment, be it what it may, ought not, for the reason which we have given, to be assigned to any crime against the person which stops short of murder. And it is hardly necessary to point out to his Lordship in Council how great a shock would be given to public feeling if, while we propose to exempt from the punishment of death the most atrocious personal outrages which stopped short of murder, we were to inflict that punishment even in the worst cases of theft, cheating, or mischief.

It will be seen that, throughout the code, wherever we have made any offence punishable by transportation, we have provided that the transportation shall be for life. The consideration which has chiefly determined us to retain that mode of punishment is our persuasion that it is regarded by the natives of India, particularly by those who live at a distance from the sea, with peculiar fear. The pain which is caused by punishment is unmixed evil. It is by the terror which it inspires that it produces good ; and perhaps no punishment inspires so much terror in proportion to the actual pain which it causes as the punishment of transportation in this country. Prolonged imprisonment may be more painful in the actual endurance ; but it is not so much dreaded beforehand ; nor does a sentence of

imprisonment strike either the offender or the by-standers with so much horror as a sentence of exile beyond what they call the Black Water. This feeling, we believe, arises chiefly from the mystery which overhangs the fate of the transported convict. The separation resembles that which takes place at the moment of death. The criminal is taken forever from the society of all who are acquainted with him, and conveyed by means of which the natives have but an indistinct notion, over an element which they regard with extreme awe, to a distant country of which they know nothing, and from which he is never to return. It is natural that his fate should impress them with a deep feeling of terror. It is on this feeling that the efficacy of the punishment depends; and this feeling would be greatly weakened if transported convicts should frequently return, after an exile of seven or fourteen years, to the scene of their offences, and to the society of their former friends.

We may observe that the rule which we propose to lay down is already in force in almost every part of British India. The courts established by the Royal Charters and courts-martial are at present the only courts which sentence offenders to transportation for any term short of life. In the case of European offenders who are condemned to long terms of imprisonment, we allow the government to commute imprisonment for transportation not perpetual. But in that case we are of opinion that in general the transported criminal ought not, after the expiration of the term for which he is transported, to be allowed to return to India. This rule and the reasons for it will be considered hereafter.

Of imprisonment we propose to institute two grades,

rigorous imprisonment and simple imprisonment. But we do not think the penal code the proper place for describing with minuteness the nature of either kind of punishment.

We entertain a confident hope that it will shortly be found practicable greatly to reduce the terms of imprisonment which we propose. Where a good system of prison discipline exists, where the criminal, without being subject to any cruel severities, is strictly restrained, regularly employed in labor not of an attractive kind, and deprived of every indulgence not necessary to his health, a year's confinement will generally prove as efficacious as confinement for two years in a jail where the superintendence is lax, where the work exacted is light, and where the convicts find means of enjoying as many luxuries as if they were at liberty. As the intensity of the punishment is increased, its length may safely be diminished. As members of the committee which is now employed in investigating the system followed in the jails of this country, we have had access to information which enables us to say with confidence that, in this department of the administration, extensive reforms are greatly needed, and may easily be made. The researches of that committee will, we hope, enable the Law Commission hereafter to prepare such a code of prison discipline as, without shocking the humane feelings of the community, may yet be a terror to the most hardened wrong-doers. Whenever such a code shall come into operation, we conceive that it will be advisable greatly to shorten many of the terms of imprisonment which we have proposed.

It will be seen that we have given to the government

a power of commuting sentences in certain cases without the consent of the offender. Some of the rules which we have laid down on this subject will be universally allowed to be proper. It is evidently fit that the government should be empowered to commute the sentence of death for any other punishment provided by the code. It seems to us also very desirable that the government should have the power of commuting perpetual transportation for perpetual imprisonment. Many circumstances of which the executive authorities ought to be accurately informed, but which must often be unknown to the ablest judge, may, at particular times, render it highly inconvenient to carry a sentence of transportation into effect. The state of those remote provinces of the empire in which convict settlements are established, and the way in which the interest of those provinces may be affected by any addition to the convict population, are matters which lie altogether out of the cognizance of the tribunals by which those sentences are passed, and which the government only is competent to decide.

The provisions contained in clauses 43 and 44 are more likely to cause difference of opinion. We are satisfied that both humanity and policy require that those provisions, or provisions very similar to them, should be adopted.

The physical difference which exists between the European and the native of India renders it impossible to subject them to the same system of prison discipline. It is most desirable, indeed, that in the treatment of offenders convicted of the same crime and sentenced to the same punishment, there should be no apparent inequality. But it is still more desirable that there

should be no real inequality, and there must be real inequality unless there be apparent inequality. It would be cruel to subject a European for a long period to a severe prison discipline, in a country in which existence is almost constant misery to a European who has not many indulgences at his command. If not cruel, it would be impolitic. It is unnecessary to point out to his Lordship in Council how desirable it is that our national character should stand high in the estimation of the inhabitants of India, and how much that character would be lowered by a frequent exhibition of Englishmen of the worst description, placed in the most degrading situations, stigmatized by the courts of justice, and engaged in the ignominious labor of a jail.

As there are strong reasons for not punishing Europeans with imprisonment of the same description with which we propose to punish natives, so there are reasons equally strong for not suffering Europeans who have been convicted of serious crimes to remain in this country. As we are satisfied that nothing can add more strength to the government, or can be more beneficial to the people, than the free admission of honest, industrious and intelligent Englishmen, so we are satisfied that no greater calamity could befall either the government or the people than the influx of Englishmen of lawless habits and blasted character. Such men are of the same race and color with the rulers of the country ; they speak the same language, they wear the same garb. In all these things they differ from the great body of the population. It is natural and inevitable that in the minds of a people accustomed to be governed by Englishmen, the idea of an Englishman should be associated with the idea of government.

Every Englishman participates in the power of government, though he holds no office. His vices reflect disgrace on the government, though the government gives him no countenance.

It was probably on these grounds that Parliament, at the same time at which it threw open a large part of India to British-born subjects of the King, directed the local legislature to provide against those dangers which might be expected from an influx of such settlers. No regulation can, in our opinion, promote more effectually, or in a more unexceptionable manner, the end which Parliament had in view than that which we now propose.

We recommend that, whenever a person, not both of Asiatic birth and of Asiatic blood, commits an offence so serious that he is sentenced to two years of simple imprisonment, or to one year of rigorous imprisonment, it shall be competent to the government to commute that punishment for banishment from the territories of the East India Company.

If a person of unmixed European blood should commit an offence so heinous as to be visited with a sentence of imprisonment for seven years or more, we would give to the government the power of substituting an equal term of transportation for that term of imprisonment, and of excluding the offender, after the expiration of the term of transportation, from the territories of the East India Company. The government would, doubtless, make arrangements for transporting such offenders to some British colony situated in a temperate climate.

In the great majority of cases we believe that this commutation of punishment would be most welcome to a European offender. But however this may be, we

are satisfied that it is for the interest, both of the British government and of the Indian people, that the executive authorities should possess the power which we propose to confide to them.

The forfeiture of property is a punishment which we propose to inflict only on persons guilty of high political offences. The territorial possessions of such persons often enable them to disturb the public peace, and to make head against the government; and it seems reasonable that they should be deprived of so dangerous a power.

Fine is one of the most common punishments in every part of the world; and it is a punishment the advantages of which are so great and obvious, that we propose to authorize the courts to inflict it in every case, except where forfeiture of all property is necessarily part of the punishment. Yet the punishment of fine is open to some objections. Death, imprisonment, transportation, banishment, solitude, compelled labor, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the legislature, in assigning these punishments to offences, may safely neglect the differences produced by temper and situation. With fine, the case is different. In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence. The mulct which is ruinous to a laborer is easily borne by a tradesman, and it is absolutely unfelt by a rich zemindar.

It is impossible to fix any limit to the amount of a fine which will not either be so high as to be ruinous to the poor, or so low as to be no object of terror to the rich. There are many millions in India who would be

utterly unable to pay a fine of fifty rupees ; there are hundreds of thousands from whom such a fine might be levied, but whom it would reduce to extreme distress ; there are thousands to whom it would give very little uneasiness ; there are hundreds to whom it would be a matter of perfect indifference, and who would not cross a room to avoid it. The number of the poor in every country exceeds in a very great ratio the number of the rich. The number of poor criminals exceeds the number of rich criminals in a still greater ratio. And to the poor criminal it is a matter of absolute indifference whether the fine to which he is liable be limited or not, unless it be so limited as to render it quite inefficient as a mode of punishing the rich. To a man who has no capital, who has laid by nothing, whose monthly wages are just sufficient to provide himself and his family with their monthly rice, it matters not whether the fine for assault be left to be settled by the discretion of the courts, or whether a hundred rupees be fixed as the maximum. There are no degrees in impossibility. He is no more able to pay a hundred rupees than to pay a lac. A just and wise judge, even if intrusted with a boundless discretion, will not, under ordinary circumstances, sentence such an offender to a fine of a hundred rupees. And the limit of a hundred rupees would leave it quite in the power of an unjust or inconsiderate judge to inflict on such an offender all the evil which can be inflicted on him by means of fine.

If, in imitation of Mr. Livingston, we provide that no fine shall exceed one fourth of the amount of the offender's property, no serious fine will ever be imposed in this country without a long and often a most un-

satisfactory investigation, in which it would be necessary to decide many obscure questions of right purposely darkened by every artifice of chicanery. And even if this great practical difficulty did not exist, we should see strong objections to such a provision in a very large class of cases. Take the case of a corrupt judge who has accumulated a lac of rupees by his illicit practices. A fine which should deprive such a man of the whole of his fortune would not appear to us excessive : and certainly we should think it most undesirable that he should be allowed to retain 75,000 rupees of his ill-gotten gains. Again, take the case of a man who has been suborned to commit perjury, and has received a great bribe for doing so. Such a man may have little or no property, except what he has received as a bribe ; yet it is evidently desirable that he should be compelled to disgorge the whole. No man ought ever to gain by breaking the law ; and if Mr. Livingston's rule were adopted in this country, many would gain by breaking the law. To punish a man for a crime, and yet to leave in his possession three fourths of the consideration which tempted him to commit the crime, is to hold out at once punishments for crime, and inducements to crime. It appears to us that the punishment of fine is a peculiarly appropriate punishment for all offences to which men are prompted by cupidity ; for it is a punishment which operates directly on the very feeling which impels men to such offences. A man who has been guilty of great offences arising from cupidity—of forging a bill of exchange, for example, of keeping a receptacle for stolen goods, or of extensive embezzlement—ought, we conceive, to be so fined as to reduce him to poverty. That such a man should,

when his imprisonment is over, return to the enjoyment of three fourths of his property, a property which may be very large, and which may have been accumulated by his offences, appears to us highly objectionable. Those persons who are most likely to commit such offences would often be less deterred by knowing that the offender had passed several years in imprisonment, than encouraged by seeing him, after his liberation, enjoying the far larger part of his wealth.

We have never seen any general rule for the limiting of fine which we are disposed to adopt. The difficulty of framing a rule has evidently been felt by many eminent men. The authors of the Bill of Rights, with many instances of gross abuse fresh in their recollection, could devise no other rule than that excessive fines should not be imposed. And the authors of the Constitution of the United States, after the experience of another century, contented themselves with repeating the words of the Bill of Rights.

It will be seen that in cases which are not very heinous we propose to limit the amount of fine which the courts may impose. But in serious cases we have left the amount of fine absolutely to their discretion ; and we feel, as we have said, that, even in the cases where we have proposed a limit, such a limit will be no protection to the poor, who in every community are also the many. We feel that the extent of the discretion which we have thus left to the courts is an evil, and that no sagacity and no rectitude of intention can secure a judge from occasional error. We conceive, however, that if fine is to be employed as a punishment —and no judicious person, we are persuaded, would propose to dispense with it—this evil must be endured.

We shall attempt in the code of procedure to establish such a system of appeal as may prevent gross or frequent injustice from taking place.

The next question which it became our duty to consider was this :—when a fine has been imposed, what measures shall be adopted in default of payment? And here two modes of proceeding, with both of which we were familiar, naturally occurred to us. The offender may be imprisoned till the fine is paid, or he may be imprisoned for a certain term, such imprisonment being considered as standing in place of the fine. In the former case, the imprisonment is used in order to compel him to part with his money; in the latter case, the imprisonment is a punishment substituted for another punishment. Both modes of proceeding appear to us to be open to strong objections. To keep an offender in imprisonment till his fine is paid is, if the fine be beyond his means, to keep him in imprisonment all his life; and it is impossible for the best judge to be certain that he may not sometimes impose a fine which shall be beyond the means of an offender. Nothing could make such a system tolerable except the constant interference of some authority empowered to remit sentences; and such constant interference we should consider as in itself an evil. On the other hand, to sentence an offender to fine and to a certain fixed term of imprisonment in default of payment, and then to leave it to himself to determine whether he will part with his money or lie in jail, appears to us to be a very objectionable course. The high authority of Mr. Livingston is here against us. He allows the criminal, if sentenced to a fine exceeding one fourth of his property, to compel the judge to commute the excess for imprison-

ment at the rate of one day of imprisonment for every two dollars of fine, and he adds, that such imprisonment must in no case exceed ninety days. We regret that we cannot agree with him. The object of the penal law is to deter from offences, and this can only be done by means of inflictions disagreeable to offenders. The law ought not to inflict punishments unnecessarily severe ; but it ought not, on the other hand, to call the offender into council with his judges, and to allow him an option between two punishments. In general, the circumstance that he prefers one punishment raises a strong presumption that he ought to suffer the other. The circumstance that the love of money is a stronger passion in his mind than the love of personal liberty is, as far as it goes, a reason for our availing ourselves rather of his love of money than of his love of personal liberty for the purpose of restraining him from crime.

It may, perhaps, appear to some persons harsh to imprison a man for non-payment of a fine, and, after he has endured his imprisonment, to take his property by distress in order to realize the fine. But this harshness is rather apparent than real. If the offender, having the means of paying the fine, chooses rather to lie in prison than to part with his money, his case is the very case in which it is most desirable that the fine should be levied, and he is the very convict who has least claim to indulgence. The confinement which he has undergone may be regarded as no more than a reasonable punishment for his obstinate resistance to the due execution of his sentence. If the offender has not the means of paying the fine while he continues liable to it, he will be quit for his imprisonment. There remains another case ; that of an offender who, being

really unable to pay his fine, lies in prison for a term, and within six years after his sentence acquires property. This case is the only case in which it can, with any plausibility, be maintained that the law, as we have framed it, would operate harshly. Even in this case, it is evident that our law will operate far less harshly than a law which should provide that an offender sentenced to a fine should be imprisoned till the fine should be paid. Under both laws imprisonment in inflicted, under both a fine is exacted. But the one law liberates the offender on payment of the fine, and also fixes a limit beyond which he cannot be detained in jail, whether the fine be paid or no. The other law keeps him in confinement till the money is actually paid. It is, therefore, at least as severe as ours on his property, and is immeasurably more severe on his person.

In fact, we treat an offender who has been sentenced to fine more leniently than the law now treats a debtor either in England or in this country. By the English law, an insolvent not in trade is kept in confinement till he has surrendered all his property, till he has answered interrogatories respecting it, till the court is satisfied that he has paid all that he can pay. Even when his person is liberated, his future acquisitions still continue to be liable to the claims of his creditors. The law throughout British India is in principle the same with the law of England. The offender who has been sentenced to fine must be considered as a debtor, and as a debtor, not entitled to any peculiar lenity. It will be difficult to show on what principles a creditor ought to be allowed to employ, for the purpose of recovering a debt from a person who is perhaps only un-

fortunate, a more stringent mode of procedure than that which the State employs for the purpose of realizing a fine from the property of a criminal. If a temporary imprisonment for debt ought not to cancel the claim of the private creditor, neither ought a temporary imprisonment in default of payment of a fine to cancel the claims of public justice.

It is undoubtedly easy to put cases in which this part of the law will operate more severely than we could wish ; and so it is easy to put cases in which every penal clause in the code would operate more severely than we could wish. This is an evil inseparable from all legislation. General rules must be framed ; and it is absolutely impossible to frame general rules which shall suit all particular cases. It is sufficient if the rule be, on the whole, more beneficial than any other general rule which can be suggested. Those particular cases in which a rule generally beneficial may operate too harshly must be left to the merciful consideration of the executive government. We are satisfied that the punishment of fine would, under the arrangement which we propose, be found to be the most efficacious punishment in a large class of cases. We are satisfied that if offenders are allowed to choose between imprisonment and fine, fine will lose almost its whole efficacy, and will never be inflicted on those who dread it most.

Closely connected with these questions respecting the punishment of fine is another question of the highest importance, which indeed belongs rather to the law of civil rights and to the law of procedure than to the penal law, but respecting which we are desirous to place on record the opinion which we have formed, after much reflection and discussion.

In a very large proportion of criminal cases there is good ground for a civil as well as for a penal proceeding. The English law, most erroneously in our opinion, allows no civil claim for reparation in cases where injury has been caused by an offence amounting to felony. Thus a person is entitled to reparation for what he has lost by petty fraud, but to none if he has been cheated by means of a forged bill of exchange. He is entitled to reparation if his coat has been torn, but to none if his house has been maliciously burned down. He is entitled to reparation for a slap in the face, but to none for having his nose maliciously slit, or his ears cut off. A woman is entitled to reparation for a breach of promise of marriage, but to none for a rape. To us it appears that of two sufferers, he who has suffered the greater harm has, *cæteris paribus*, the stronger claim to compensation ; and that of two offences, that which produces the greater harm ought, *cæteris paribus*, to be visited with the heavier punishment. Hence it follows that in general the strongest claims to compensations will be the claims of persons who have been injured by highly penal acts ; and that to refuse reparation to all sufferers who have been injured by highly penal acts is to refuse reparation to that very class of sufferers who have the strongest claim to it.

We are decidedly of opinion that every person who is injured by an offence ought to be legally entitled to a compensation for the injury. That the offence is a very serious one, far from being a reason for thinking that he ought to have no compensation, is *primâ facie* a reason for thinking that the compensation ought to be very large.

Entertaining this opinion, we are desirous that the

law of criminal procedure should be framed in such a manner as to facilitate the obtaining of reparation by the sufferer. We are inclined to think that an arrangement might be adopted under which one trial would do the work of two. We conceive that, in every case in which fine is part of the punishment of an offence, it ought to be competent to the tribunal which has tried the offender, acting under proper checks, to award the whole or part of the fine to the sufferer, provided that the sufferer signifies his willingness to receive what is so awarded in full satisfaction of his civil claim for reparation. If the criminal court shall not make such an award, or if the sufferer shall not be satisfied with such an award, he must be left to his civil action. But if, in such an action, he recovers damages, the fine ought, in our opinion, to be employed, as far as the fine will go, in satisfying those damages.

The plan we propose would not be open to the strong and, indeed, unanswerable objections which Mr. Livingston has urged against the plan of blending a civil and criminal trial together. Yet we think it likely that our plan would in a great majority of cases render a civil proceeding unnecessary. We are happy to be able to quote the high authority of Mr. Livingston in favor of the doctrine that every fine imposed for an offence ought to be expended, as far as it will go, in paying any damages which may be due in consequence of injury caused by that offence.

This course seems to be the only course consistent with justice to either party. It is most unjust to the man who has been disabled by a wound, or ruined by a forgery, that the government should take, under the name of fine, so large a portion of the offender's prop-

erty as to leave nothing to the sufferer. In general, the greater the injury the greater ought to be the fine. On the other hand, the greater the injury the greater ought to be the compensation. If, therefore, the government keeps whatever it can raise in the way of fine, it follows that the sufferer who has the greatest claim to compensation will be least likely to obtain it. By empowering the courts to grant damages out of the fine, and by making the fine after it has reached the treasury of the government answerable for the damages which the sufferer may recover in a civil court, we avoid this injustice.

Nor is this arrangement required only by justice to the sufferer. It is also required by justice to the offender. However atrocious his crime may have been, he ought not to be subjected to any punishment beyond what the public interest demands. And we depart from this principle if, when a single payment would effect all that is required both in the way of punishment and in the way of reparation, we impose two distinct payments, the one by way of punishment, and the other by way of reparation.

The principles on which a court proceeds in imposing a fine are quite different from those on which it proceeds in assessing damages. A fine is meant to be painful to the person paying it. But civil damages are not meant to cause pain to the person who pays them. They are meant solely to compensate the plaintiff for evil suffered. They cause pain undoubtedly to the person who has to pay them. But this pain is merely incidental ; nor ought the amount of damages at all to depend on the degree of depravity which the wrongdoer has shown, except in so far as that depravity may

have increased the evil endured by the sufferer. If A, by mere inadvertence, drives the pole of his carriage against Z's valuable horse, and thus kills the horse, A has committed an action infinitely less reprehensible than if he kills the horse by laying poison secretly in its food. The former act would probably not fall at all under the cognizance of the criminal courts. The latter act would be severely punished. But the payment to which Z has a civil claim is in both cases exactly the same, the value of the horse, and a compensation for any expense and inconvenience which the loss of the horse may have occasioned. That A has committed no offence is no reason for giving Z less than his full damages; that A has committed a most wicked and malignant offence is no reason for giving Z more than his full damages. If a mere inadvertence cause a great loss, the damages ought to be high. If the most atrocious crime cause a small loss, the damages ought to be low. They are fixed on a principle quite different from that according to which penal laws are framed and administered.

Here, then, are two payments required from one person on account of one transaction. The object of the one payment is to give him pain, and the amount of that payment must be supposed to be sufficient to give him as much pain as it is desirable to inflict on him in that form. The object of the other payment is not at all to give pain to the payer, but solely to save another person from loss. It does, indeed, incidentally give pain to the payer; but it is not imposed for that end, nor is it proportioned to the degree in which it may be fit that the payer should suffer pain. Surely, under such circumstances justice to the payer requires that

The Shaking Minarets at Ahmedabad.

From a drawing by Captain Grindlay.

the former payment should, as far as it will go, serve both purposes, and that if in the very act of enduring punishment he can make reparation, he should be permitted to do so.

We have now said all that we at present think it necessary to say respecting the punishments provided in the code. It may be fit that we should explain why some others are omitted.

We have thought it unnecessary to place incapacitation for office, or dismissal from office, in the list of punishments. It will always be in the power of the government to dismiss from office and to exclude from office even persons against whom there is no legal evidence of guilt. It will always be in the power of the government, by an act of grace, to admit to office even those who may have been dismissed. We therefore propose that the power of inflicting this penalty shall be left in form, as it must be left in reality, to the government.

We also considered whether it would be advisable to place in the list of punishments the degrading public exhibition of an offender on a pillory, after the English fashion, or on an ass, in the manner usual in this country. We are decidedly of opinion that it is not advisable to inflict that species of punishment.

Of all punishments this is evidently the most unequal. It may be more severe than any punishment in the code. It may be no punishment at all. If inflicted on a man who has quick sensibility, it is generally more terrible than death itself. If inflicted on a hardened and impudent delinquent, who has often stood at the bar, and who has no character to lose, it is a punishment less serious than an hour of the tread-

mill. It derives all its terrors from the higher and better parts of the character of the sufferer ; its severity is therefore in inverse proportion to the necessity for severity. An offender who, though he has been drawn into crime by temptation, has not yet wholly given himself up to wickedness and discarded all regard for reputation, is an offender with whom it is generally desirable to deal gently. He may still be reclaimed. He may still become a valuable member of society. On the other hand, the criminal for whom disgrace has no terrors, who dreads nothing but physical suffering, restraint and privation, and who laughs at infamy, is the very criminal against whom the whole rigor of the law ought to be put forth. To employ a punishment which is more bitter than the bitterness of death to the man who has still some remains of virtuous and honorable feeling, and which is mere matter of jest to the utterly abandoned villain, appears to us most unreasonable.

If it were possible to devise a punishment which should give pain proportioned to the degree in which the offender was shameless, hard-hearted, and abandoned to vice, such a punishment would be the most effectual means of protecting society. On the other hand, of all punishments the most absurd is that which produces pain proportioned to the degree in which the offender retains the sentiments of an honest man.

This argument proceeds on the supposition that the public exposure of the criminal has no other terrors than those which it derives from his sensibility to shame. The English pillory, indeed, had terrors of a very different kind. The offender was, even in our own time, given up with scarcely any protection to the utmost ferocity of the mob. Such a mode of

punishment is, indeed, free from one objection which we have urged against simple exposure ; for it is an object of terror to the most hardened criminal. But it is open to other objections so obvious, that it is unnecessary to bring them to the notice of his Lordship in Council. That the amount of punishment should be determined, not by the law or by the tribunals, but by a throng of people accidentally congregated, among whom the most ignorant and brutal would always on such an occasion be the most forward, would be a disgrace to an age and country pretending to civilization. We take it for granted that the punishment which we are considering, if inflicted in any part of India subject to the British government, would consist in degrading exposure, and nothing more. That punishment, we repeat, while it would be a mere subject of mockery to shameless and abandoned delinquents, would, when inflicted on men who have filled respectable stations and borne respectable characters, be so cruel that it would become justly more odious to the public than the very offences which it was intended to repress.

We have not thought it desirable to place flogging in the list of punishments. If inflicted for atrocious crimes with a severity proportioned to the magnitude of those crimes, that punishment is open to the very serious objections which may be urged against all cruel punishments, and which are so well known that it is unnecessary for us to recapitulate them. When inflicted on men of mature age, particularly if they be of decent stations in life, it is a punishment of which the severity consists, to a great extent, in the disgrace which it causes ; and to that extent the arguments which we have used against public exposure apply to flogging.

It has been represented to us by some functionaries in Bengal that the best mode of stimulating the lower officers of police to the active discharge of their duties is by flogging, and that since the abolition of that punishment in this presidency the magistrates of the lower provinces have found great difficulty in managing that class of persons.

This difficulty has not been experienced in any other part of India. We therefore cannot, without much stronger evidence than is now before us, believe that it is impracticable to make the police-officers of the lower provinces efficient without resorting to corporal punishment. The objections to the old system are obvious. To inflict on a public servant, who ought to respect himself and to be respected by others, an ignominious punishment, which leaves an indelible mark, and to suffer him still to remain a public servant, to place a stigma on him which renders him an object of contempt to the mass of the population, and to continue to intrust him with any portion, however small, of the powers of government, appears to us to be a course which nothing but the strongest necessity can justify.

The moderate flogging of young offenders for some petty offences is not open, at least in any serious degree, to the objections which we have stated. Flogging does not inflict on a boy that sort of ignominy which it causes to a grown man. Up to a certain age, boys, even of the higher classes, are often corrected with stripes by their parents and guardians ; and this circumstance takes away a considerable part of the disgrace of stripes inflicted on a boy by order of a magistrate. In countries where a bad system of prison discipline exists, the punishment of flogging has in

such cases one great advantage over that of imprisonment. The young offender is not exposed even for a day to the contaminating influence of an ill-regulated jail. It is our hope and belief, however, that the reforms which are now under consideration will prevent the jails of India from exercising any such contaminating influence ; and, if that should be the case, we are inclined to think that the effect of a few days passed in solitude, or in hard and monotonous labour, would be more salutary than that of stripes.

Being satisfied, therefore, that the punishment of flogging can be proper only in a few cases, and not being satisfied that it is necessary in any, we are unwilling to advise the government to retrace its steps, and to re-establish throughout the British territories a practice which, by a policy unquestionably humane and by no means proved to have been injudicious, has recently been abolished through a large part of those territories.

The only remaining point connected with this chapter, to which we wish to call the attention of his Lordship in Council, is the provision contained in Clause 61. This provision is intended to prevent an offender whose guilt is fully established from eluding punishment, on the ground that the evidence does not enable the tribunals to pronounce with certainty under what penal provision his case falls.

Where the doubt is merely between an aggravated and mitigated form of the same offence, the difficulty will not be great. In such cases the offender ought always to be convicted of the minor offence. But the doubt may be between two offences, neither of which is a mitigated form of the other. The doubt, for ex-

ample, may lie between murder and the aiding of murder. It may be certain, for example, that either A or B murdered Z, and that whichever was the murderer was aided by the other in the commission of the murder; but which committed the murder, and which aided the commission, it may be impossible to ascertain. To suffer both to go unpunished, though it is certain that both are guilty of capital crimes, merely because it is doubtful under what clause each of them is punishable, would be most unreasonable. It appears to us that a conviction in the alternative has this recommendation, that it is altogether free from fiction, that it is exactly consonant to the truth of the facts. If the court find both A and B guilty of murder, or of aiding murder, the court affirms that which is not literally true; and on all occasions, but especially in judicial proceedings, there is a strong presumption in favor of literal truth. If the court finds that A has either murdered Z or aided B to murder Z, and that B has either murdered Z or aided A to murder Z, the court finds that which is the literal truth; nor will there, under the rule which we have laid down, be the smallest difficulty in prescribing the punishment.

It is chiefly in cases where property has been fraudulently appropriated that the necessity for such a provision as that which we are considering will be felt. It will often be certain that there has been a fraudulent appropriation of property; and the only doubt will be, whether this fraudulent appropriation was a theft or a criminal breach of trust. To allow the offender to escape unpunished on account of such a doubt would be absurd. To subject him to the punishment of theft, which is the higher of the two crimes between which

the doubt lies, would be grossly unjust. The punishment to which he ought to be liable is evidently that of criminal breach of trust. But that a court should convict an offender of a criminal breach of trust, when the opinion of the court perhaps is, that it is an even chance, or more than an even chance, that no trust was ever reposed in him, seems to us an objectionable mode of proceeding. We will not, in this stage of our labors, venture to lay it down as an unbending rule that the tribunals ought never to employ phrases which, though literally false, are conventionally true. Yet we are fully satisfied that the presumption is always strongly in favor of that form of expression which accurately sets forth the real state of the facts. In the case which we have supposed, the real state of the facts is, that the offender has certainly committed either theft or criminal breach of trust, and that the court does not know which. This ought, therefore, in our opinion, to be the form of the judgment.

The details of the law on this subject must, of course, be reserved for the code of procedure. But the provision which directs the manner in which the punishment is to be calculated appears properly to belong to the penal code.

NOTE (B)

ON THE CHAPTER OF GENERAL EXCEPTIONS

This chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations.

Some limitations relate only to a single provision, or to a very small class of provisions. Thus the exception in favor of true imputations on character (Clause 470) is an exception which belongs wholly to the law of defamation, and does not affect any other part of the code. The exception in favor of the conjugal rights of the husband (Clause 359) is an exception which belongs wholly to the law of rape, and does not affect any other part of the code. Every such exception evidently ought to be appended to the rule which it is intended to modify.

But there are other exceptions which are common to all the penal clauses of the code, or to a great variety of clauses dispersed over many chapters. Such are the exceptions in favor of infants, lunatics, idiots, persons under the influence of delirium; the exceptions in favor of acts done by the direction of the law, of acts done in the exercise of the right of self-defence, of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter, and we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter. Most of those explanations appear to us to require no explanation or defence. But the meaning and the ground of the rules laid down in Clause 69 and in the three following clauses may not be obvious at first sight. On these, therefore, we wish to make a few observations.

We conceive the general rule to be, that nothing

ought to be an offence by reason of any harm which it may cause to a person of ripe age who, undeceived, has given a free and intelligent consent to suffer that harm or to take the risk of that harm. The restrictions by which the rule is limited affect only cases where human life is concerned. Both the general rule and the restrictions may, we think, be easily vindicated.

If Z, a grown man, in possession of all his faculties, directs that his valuable furniture shall be burned, that his pictures shall be cut to rags, that his fine house shall be pulled down, that the best horses in his stable shall be shot, that his plate shall be thrown into the sea, those who obey his orders, however capricious those orders may be, however deeply Z may afterwards regret that he gave them, ought not, as it seems to us, to be punished for injuring his property. Again, if Z chooses to sell his teeth to a dentist, and permits the dentist to pull them out, the dentist ought not to be punished for injuring Z's person. So if Z embraces the Mahometan religion, and consents to undergo the painful rite which is the initiation into that religion, those who perform the rite ought not to be punished for injuring Z's person.

The reason on which the general rule which we have mentioned rests is this, that it is impossible to restrain men of mature age and sound understanding from destroying their own property, their own health, their own comfort, without restraining them from an infinite number of salutary or innocent actions. It is by no means true that men always judge rightly of their own interest. But it is true that, in the vast majority of cases, they judge better of their own interest than any law-giver, or any tribunal, which must necessarily pro-

ceed on general principles, and which cannot have within its contemplation the circumstances of particular cases and the tempers of particular individuals, can judge for them. It is difficult to conceive any law which should be effectual to prevent men from wasting their substance on the most chimerical speculations, and yet which should not prevent the construction of such works as the Duke of Bridgewater's canals. It is difficult to conceive any law which should prevent a man from capriciously destroying his property, and yet which should not prevent a philosopher, in a course of chemical experiments, from dissolving a diamond, or an artist from taking ancient pictures to pieces, as Sir Joshua Reynolds did, in order to learn the secret of the coloring. It is difficult to conceive any law which should prevent a man from capriciously injuring his own health, and yet which should not prevent an artisan from employing himself in callings which are necessary to society, but which tend to impair the constitutions of those who follow them, or a public-spirited physician from inoculating himself with the virus of a dangerous disease. It is chiefly, we conceive, for this reason that almost all governments have thought it sufficient to restrain men from harming others, and have left them at liberty to harm themselves.

But though in general we would not punish an act on account of any harm which it might cause to a person who had consented to suffer that harm, we think that there are exceptions to this rule, and that the case in which death is intentionally inflicted is an exception.

It appears to us that the reasons which render it highly inexpedient to inflict punishment in ordinary cases of harm done by consent of the person harmed do

not exist here. The thing prohibited is not, like the destruction of property, or like the mutilation of the person, a thing which is sometimes pernicious, sometimes innocent, sometimes highly useful. It is always, and under all circumstances, a thing which a wise lawgiver would desire to prevent, if it were only for the purpose of making human life more sacred to the multitude. We cannot prohibit men from destroying the most valuable effects, or from disfiguring the person of one who has given his unextorted and intelligent consent to such destruction or such disfiguration, without prohibiting at the same time gainful speculations, innocent luxuries, manly exercises, healing operations. But by prohibiting a man from intentionally causing the death of another, we prohibit nothing which we think it desirable to tolerate.

It seems to us clear, therefore, that no consent ought to be a justification of the intentional causing of death, Whether such intentional causing of death ought or ought not to be punished as murder is a distinct question, and will be considered elsewhere.

The next point which we have here to consider is how far consent ought to be a justification of the causing of death, when that causing of death is, in our nomenclature, voluntary, yet not intentional; that is to say, when the person who caused the death did not mean to cause it, but knew that he was likely to cause it.

In general, we have made no distinction between cases in which a man causes an effect designedly, and cases in which he causes it with a knowledge that he is likely to cause it. If, for example, he sets fire to a house in a town at night, with no other object than

that of facilitating a theft, but being perfectly aware that he is likely to cause people to be burned in their beds, and thus causes the loss of life, we punish him as a murderer. But there is, as it appears to us, a class of cases in which it is absolutely necessary to make a distinction. It is often the wisest thing that a man can do to expose his life to great hazard. It is often the greatest service that can be rendered to him to do what may very probably cause his death. He may labor under a cruel and wasting malady which is certain to shorten his life and which renders his life, while it lasts, useless to others, and a torment to himself. Suppose that under these circumstances he, undeceived, gives his free and intelligent consent to take the risk of an operation which in a large proportion of cases has proved fatal, but which is the only method by which his disease can possibly be cured, and which, if it succeeds, will restore him to health and vigor. We do not conceive that it would be expedient to punish the surgeon who should perform the operation, though by performing it he might cause death, not intending to cause death, but knowing himself to be likely to cause it. Again ; if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call, we do not conceive that it would be expedient to punish them, though they might by firing cause his death, and though when they fired they knew themselves to be likely to cause his death.

We propose, therefore, that it shall be no offence to do even what the doer knows to be likely to cause death if the sufferer, being of ripe age has, undeceived, given a free and intelligent consent to stand the risk,

and if the doer did not intend to cause death, but, on the contrary, intended in good faith the benefit of the sufferer.

We have now explained the provisions contained in Clauses 69 and 70. The cases to which the two next clauses bear a close affinity to those which we have just considered.

A lunatic may be in a state which makes it proper that he should be put into a strait-waistcoat. A child may meet with an accident, which may render the amputation of a limb necessary. But to put a strait-waistcoat on a man without his consent is, under our definition, to commit an assault. To amputate a limb is, by our definition, voluntarily to cause grievous hurt, and, as sharp instruments are used, is a very highly penal offence. We have therefore provided, by Clause 71, that the consent of the guardian of a sufferer who is an infant, or who is of unsound mind, shall, to a great extent, have the effect which the consent of the sufferer himself would have if the sufferer were of ripe age and sound mind.

That there should be some provision of this sort is evidently necessary. On the other hand, we feel that there is a considerable danger in allowing people to assume the office of judging for others in such cases. Every man always intends in good faith his own benefit, and has a deeper interest in knowing what is for his own benefit than anybody else can have. That he gives a free and intelligent consent to suffer pain or loss, creates a strong presumption that it is good for him, on the whole, to suffer that pain or loss. But we cannot safely confide to him the interest of his neighbors in the same unreserved manner in which we con-

fide to him his own, even when he sincerely intends to benefit his neighbors. Even parents have been known to deliver their children up to slavery in a foreign country, to inflict the most cruel mutilations on their male children, to sacrifice the chastity of their female children, and to do all this declaring, and perhaps with truth, that their object was something which they considered as advantageous to the children. We have, therefore, not thought it sufficient to require that on such occasions the guardian should act in good faith for the benefit of the ward. We have imposed several additional restrictions which, we conceive, carry their defence with them.

There yet remains a kindred class of cases which are by no means of rare occurrence. For example, a person falls down in an apoplectic fit. Bleeding alone can save him, and he is unable to signify his consent to be bled. The surgeon who bleeds him commits an act falling under the definition of an offence. The surgeon is not the patient's guardian, and has no authority from any such guardian ; yet it is evident that the surgeon ought not to be punished. Again, a house is on fire. A person snatches up a child too young to understand the danger, and flings it from the house-top, with a faint hope that it may be caught in a blanket below, but with the knowledge that it is highly probable that it will be dashed to pieces. Here, though the child may be killed by the fall, though the person who threw it down knew that it would very probably be killed, and though he was not the child's parent or guardian, he ought not to be punished.

In these examples there is what may be called a temporary guardianship, justified by the exigency of the

case and by the humanity of the motive. This temporary guardianship bears a considerable analogy to that temporary magistracy with which the law invests every person who is present when a great crime is committed, or when the public peace is concerned. To acts done in the exercise of this temporary guardianship, we extend by Clause 72 a protection very similar to that which we have given to the acts of regular guardians.

Clause 73 is intended to provide for those cases which, though, from the imperfections of language, they fall within the letter of the penal law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommode him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society ; acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crimes. That these acts ought not to be treated as crimes is evident, and we think it far better expressly to except them from the penal clauses of the code than to leave it to the judges to except them in practice ; for if the code is silent on the subject, the judges can except these cases only by resorting to one of two practices which we consider as most pernicious, by making law, or by wresting the language of the law from its plain meaning.

We propose (clauses 74 to 84) to except from the

operation of the penal clauses of the code large classes of acts done in good faith for the purpose of repelling unlawful aggressions. In this part of the chapter we have attempted to define, with as much exactness as the subject appears to us to admit, the limits of the right of private defence. It may be thought that we have allowed too great a latitude to the exercise of this right ; and we are ourselves of opinion that if we had been framing laws for a bold and high-spirited people, accustomed to take the law into their own hand, and to go beyond the line of moderation in repelling injury, it would have been fit to provide additional restrictions. In this country the danger is on the other side ; the people are too little disposed to help themselves ; the patience with which they submit to the cruel depredations of gang-robbers, and to trespass and mischief committed in the most outrageous manner by bands of ruffians, is one of the most remarkable, and at the same time one of the most discouraging, symptoms which the state of society in India presents to us. Under these circumstances we are desirous rather to rouse and encourage a manly spirit among the people than to multiply restrictions on the exercise of the right of self-defence. We are of opinion that all the evil which is likely to arise from the abuse of that right is far less serious than the evil which would arise from the execution of one person for overstepping what might appear to the courts to be the exact line of moderation in resisting a body of dacoits.

We think it right, however, to say that there is no part of the code with which we feel less satisfied than this. We cannot accuse ourselves of any want of diligence or care. No portion of our work has cost us

more anxious thought or has been more frequently rewritten. Yet we are compelled to own that we leave it still in a very imperfect state ; and though we do not doubt that it may be far better executed than it has been by us, we are inclined to think that it must always be one of the least exact parts of every system of criminal law.

We have now made such observations as appear to us to be required on the general exceptions which we propose. It is proper that we should next explain why we have not proposed any exception in favor of some classes of acts which, as some persons may think, are entitled to indulgence.

We long considered whether it would be advisable to except from the operation of the penal clauses of the code acts committed in good faith from the desire of self-preservation ; and we have determined not to except them.

We admit, indeed, that many acts falling under the definition of offences ought not to be punished when committed from the desire of self-preservation ; and for this reason, that, as the penal code itself appeals solely to the fears of men, it never can furnish them with motives for braving dangers greater than the dangers with which it threatens them. Its utmost severity will be inefficacious for the purpose of preventing the mass of mankind from yielding to a certain amount of temptation. It can, indeed, make those who have yielded to the temptation miserable afterwards. But misery which has no tendency to prevent crime is so much clear evil. It is vain to rely on the dread of a remote and contingent evil as sufficient to overcome the dread of instant death, or the sense of actual torture. An

eminently virtuous man, indeed, will prefer death to crime ; but it is not to our virtue that the penal law addresses itself ; nor would the world stand in need of penal laws if men were virtuous. A man who refuses to commit a bad action, when he sees preparations made for killing or torturing him unless he complies, is a man who does not require the fear of punishment to restrain him. A man, on the other hand, who is withheld from committing crimes solely or chiefly by the fear of punishment, will never be withheld by that fear when a pistol is held to his forehead or a lighted torch applied to his fingers for the purpose of forcing him to commit a crime.

It would, we think, be mere useless cruelty to hang a man for voluntarily causing the death of others by jumping from a sinking ship into an overloaded boat. The suffering caused by the punishment is, considered by itself, an evil, and ought to be inflicted only for the sake of some preponderating good. But no preponderating good—indeed, no good whatever—would be obtained by hanging a man for such an act. We cannot expect that the next man who feels the ship in which he is left descending into the waves, and sees a crowded boat putting off from it, will submit to instant and certain death from fear of a remote and contingent death. There are men, indeed, who in such circumstances would sacrifice their own lives rather than risk the lives of others. But such men act from the influence of principles and feelings which no penal laws can produce, and which, if they were general, would render penal laws unnecessary. Again, a gang of dacoits, finding a house strongly secured, seize a smith, and by torture and threats of death induce him to take his

tools and to force the door for them ; here, it appears to us, that to punish the smith as a house-breaker would be to inflict gratuitous pain. We cannot trust to the deterring effect of such punishment. The next smith who may find himself in the same situation will rather take his chance of being, at a distant time, arrested, convicted, and sentenced to imprisonment, than incur certain and immediate death.

In the cases which we have put, some persons may perhaps doubt whether there ought to be impunity ; but those very persons would generally admit that the extreme danger was a mitigating circumstance to be considered in apportioning the punishment. It might, however, with no small plausibility be contended that if any punishment at all is inflicted in such cases, that punishment ought to be not merely death, but death with torture ; for the dread of being put to death by torture might possibly be sufficient to prevent a man from saving his own life by a crime ; but it is quite certain, as we have said, that the mere fear of capital punishment which is remote, and which may never be inflicted at all, will never prevent him from saving his life ; and, *à fortiori*, the dread of a milder punishment will not prevent him from saving his life. Laws directed against offences to which men are prompted by cupidity ought always to take from offenders more than those offenders expect to gain by crime. It would obviously be absurd to provide that a thief or a swindler should be punished with a fine not exceeding half the sum which he had acquired by theft or swindling ; in the same manner, laws directed against offences to which men are prompted by fear ought always to be framed in such a way as to be more terrible than the dangers

which they require men to brave. It is on this ground, we apprehend, that a soldier who runs away in action is punished with a rigor altogether unproportioned to the moral depravity which his offence indicates. Such a soldier may be an honest and benevolent man, and irreproachable in all the relations of civil life ; yet he is punished as severely as a deliberate assassin, and more severely than a robber or a kidnapper. Why is this? Evidently because, as his offence arises from fear, it must be punished in such a manner that timid men may dread the punishment more than they dread the fire of the enemy.

If all cases in which acts falling under the definition of offences are done from the desire of self-preservation were as clear as the cases which we have put of the man who jumps from a sinking ship into a boat, and of the smith who is compelled by dacoits to force a door for them, we should, without hesitation, propose to exempt this class of acts from punishment. But it is to be observed that in both these cases the person in danger is supposed to have been brought into danger, without the smallest fault on his own part, by mere accident, or by the depravity of others. If a captain of a merchantman were to run his ship on shore in order to cheat the insurers, and then to sacrifice the lives of others in order to save himself from a danger created by his own villany; if a person who had joined himself to a gang of dacoits with no other intention than that of robbing, were at the command of his leader, accompanied with threats of instant death in case of disobedience, to commit murder, though unwillingly, the case would be widely different, and our former reasoning would cease to apply ; for it is evident that

punishment which is inefficacious to prevent a man from yielding to a certain temptation may often be efficacious to prevent him from exposing himself to that temptation. We cannot count on the fear which a man may entertain of being brought to the gallows at some distant time as sufficient to overcome the fear of instant death ; but the fear of remote punishment may often overcome the motives which induce a man to league himself with lawless companions, in whose society no person who shrinks from any atrocity that they may command can be certain of his life. Nothing is more usual than for pirates, gang-robbers, and rioters to excuse their crimes by declaring that they were in dread of their associates, and durst not act otherwise. Nor is it by any means improbable that this may often be true. Nay, it is not improbable that crews of pirates and gangs of robbers may have committed crimes which every one among them was unwilling to commit, under the influence of mutual fear ; but we think it clear that this circumstance ought not to exempt them from the full severity of the law.

Again, nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that, when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not keep him from committing theft, yet it by no means follows that it is irrational to punish him for theft ; for, though the fear of punishment is

not likely to keep any man from theft when he is actually starving, it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft; but it is of great effect to counteract the motives to that idleness and that profusion which end in bringing a man into a condition in which no law will keep him from committing theft. We can hardly conceive a law more injurious to society than one which should provide that as soon as a man who had neglected his work, or who had squandered his wages in stimulating drugs, or gambled them away, had been thirty-six hours without food, and felt the sharp impulse of hunger, he might, with impunity, steal food from his neighbors.

We should, therefore, think it in the highest degree pernicious to enact that no act done under the fear even of instant death should be an offence. It would *à fortiori* be absurd to enact that no act under the fear of any other evil should be an offence.

There are, as we have said, cases in which it would be useless cruelty to punish acts done under the fear of death, or even of evils less than death. But it appears to us impossible precisely to define these cases. We have, therefore, left them to the government, which, in the exercise of its clemency, will doubtless be guided in a great measure by the advice of the courts.

We considered whether it would be desirable to make any distinction between offences committed against freemen and offences committed against slaves. We certainly entered on the consideration of this important question with a strong leaning to the opinion that no such distinction ought to be made. We thought it our duty, however, not to come to a decision without ob-

taining information and advice from those who were best qualified to give it. We have collected information on the subject from every part of India, and we have now in our office a large collection of documents containing much that is curious, and that in future stages of the work in which we are engaged will be useful. At present we have only to consider the subject with reference to the penal code.

These documents have satisfied us that there is at present no law whatever defining the extent of the power of a master over his slaves ; that everything depends on the disposition of the particular functionary who happens to be in charge of a district, and that functionaries who are in charge of contiguous districts, or who have at different times been in charge of the same district, hold diametrically opposite opinions as to what their official duty requires. Nor is this discrepancy found only in the proceedings of subordinate courts. The Court of Nizamut Adawlut at Fort William lay down the law thus : " A master would not be punished, the court opine, for inflicting a slight correction on his legal slave, such as a tutor would be justified in inflicting on a scholar, or a father on a child." The Court of Nizamut Adawlut at Allahabad take a quite different view of the law: " Although," they say, " the Mahometan law permits the master to correct his slave with moderation, the code by which the magistrates and other criminal authorities are bound to regulate their proceeding does not recognize any such power, and as the regulations of the government draw no distinction between the slave and the freeman in criminal matters, but place them both on a level, it is the practice of the courts, following the principles of equal

justice, to treat them both alike." The Court of Foujdarry Adawlut at Madras state that it is not the practice of the courts to make any distinction whatever in cases which come before them ; that a circular order of the Foujdarry Adawlut recognizes the right of a master to inflict corrections in certain cases, but that in practice no such distinction is made. We own that we entertain some doubts whether the practice be universally such as is supposed by the Foujdarry Adawlut. We perceive that two magistrates in the western division of the Madras Presidency differ from each other in opinion on this subject. The magistrate of Canara says, that " the right of the master to inflict punishment has been allowed, but only to a very small extent." The magistrate of Malabar states, that " the relation of a master and slave has never been recognized as justifying acts which would otherwise be punishable, or as constituting a ground for mitigation of punishment." The Court of Foujdarry Adawlut at Bombay has given no opinion on the point, and there is a great difference of opinion among the subordinate authorities in the Bombay Presidency. One gentleman conceives that the imposing of personal restraint is the only act otherwise punishable which the courts would allow a master to commit when a slave might be concerned. Another conceives that a master has a power of correction similar to that of a father. A third goes farther, and is of opinion that " all but cases of very aggravated nature would be considered as entitled to exemption from or mitigation of punishment on this account." On the other hand, several gentlemen are of opinion that the relation of master and slave would not be considered by the courts as a plea for any act

which would be an offence if committed against a freeman.

It is clear, therefore, that we find the law in a state of utter uncertainty. It is equally clear that we cannot leave it in that state. We must either withdraw from a large class of slaves a protection to which the courts under the jurisdiction of which they live now think them entitled, or we must extend to a large class a protection greater than what they actually enjoy.

We have not the smallest hesitation in recommending to his Lordship in Council that the law throughout all British India should be conformable to what, in the opinion of the Court of Nizamut Adawlut at Allahabad, is now actually the law in the Presidency of Fort William, and to what, in the opinion of the Court of Foujdarry Adawlut at Fort St. George, is now actually the practice in the Madras Presidency. That is to say, we recommend that no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against his slave.

The distinction which, in the opinion of many respectable functionaries, the law now makes between acts committed against a freeman and acts committed against a slave is in itself an evil, and an evil so great that nothing but the strongest necessity, proved by the strongest evidence, could justify any government in maintaining it. We conceive that the circumstances which we have already stated are sufficient to show that no such necessity exists. By removing all doubt on the subject, we shall not deprive the master of a power the right to which has never been questioned,

but of a power which is and has for some time been, to say the least, of disputable legality, and which has been held by a very precarious tenure.

To leave the question undecided is impossible. To decide the question by putting any class of slaves in a worse situation than that in which they now are is a course which we cannot think of recommending, and which we are certain that the government will not adopt. The inference seems to be that the question ought to be decided by declaring that whatever is an offence when committed against a freeman shall be also an offence when committed against a slave.

It may perhaps be thought that, by framing the law in this manner, we do, in fact, virtually abolish slavery in British India ; and undoubtedly, if the law as we have framed it should be really carried into full effect, it will at once deprive slavery of those evils which are its essence, and will insure the speedy and natural extinction of the whole system. The essence of slavery, the circumstance which makes slavery the worst of all social evils, is not, in our opinion, this, that the master has a legal right to certain services from the slave ; but this, that the master has a legal right to enforce the performance of those services without having recourse to the tribunals. He is a judge in his own cause. He is armed with the powers of a magistrate for the protection of his own private interest against the person who owes him service. Every other judge quits the bench as soon as his own cause is called on. The judicial authority of the master begins and ends with cases in which he has a direct stake. The moment that a master is really deprived of this authority, the moment that his right to service really becomes, like

his right to money which he has lent, a mere civil right, which he can enforce only by a civil action, the peculiarly odious and malignant evils of slavery disappear at once. The name of slavery may be retained, but the thing is no longer the same. It is evidently impossible that any master can really obtain efficient service from unwilling laborers by means of prosecution before the civil tribunals. Nor is there any instance of any country in which the relation of master and servant is maintained by means of such actions. In some states of society the laborer works because the master inflicts instant correction whenever there is any disobedience or slackness. In a different state of society, the people labor for a master because the master makes it worth their while. Practically, we believe it will be found that there is no third way. A laborer who has neither the motive of the freeman nor that of the slave, who is actuated neither by the hope of wages nor by the dread of stripes, will not work at all. The master may, indeed, if he chooses, go before the tribunals and obtain a decree. But scarcely any master would think it worth while to do so, and scarcely any laborer would be spurred to constant and vigorous exertion by the dread of such a legal proceeding. In fact, we are not even able to form to ourselves the idea of a society in which the working-classes should have no other motives to industry than the dread of prosecution. We understand how the planter of Mauritius formerly induced his negroes to work. He applied the lash if they loitered. We understand how our grooms and bearers are induced to work at Calcutta. They are gainers by working, and by obtaining a good character ; they are losers by being turned away. But in

what other way servants can be induced to work we do not understand.

It appears to us, therefore, that if we can really prevent the master from exacting service by the use of any violence or restraint, or by the infliction of any bodily hurt, one or two effects will inevitably follow: either the master will obtain no service at all, or he will find himself under the necessity of obtaining it by making it a source of advantage to the laborer as well as to himself. A laborer who knows that if he idles, his master will not dare to strike him; that if he absconds, his master will not dare to confine him; that his master can enforce a claim to service only by taking more trouble, losing more time and spending more money than the service is worth, will not work for fear. It follows that if the master wishes the laborer to work at all, the master must have recourse to different motives, to the motives of a freeman, to the hope of reward, to the sense of reciprocal benefit. Names are of no consequence. It matters nothing whether the laborer be or be not called a slave. All that is of real moment is that he should work from the motives and feelings of the freeman.

This effect, we are satisfied, would follow if outrages offered to slaves were really punished exactly as outrages offered to freemen are punished. But we are far, indeed, from thinking that, by merely framing the law as we have framed it, we shall produce this effect. It is quite certain that slaves are, at present, often oppressed by their masters in districts where the magistrates and judges conceive that the law now is what we propose that it shall henceforth be. It is, therefore, evident, that they may continue to be oppressed by

their masters when the law has been made perfectly clear. To an ignorant laborer, accustomed from his birth to obey a superior for daily food, to submit without resistance to the cruelty and tyranny of that superior, perhaps to be transferred, like a horse or a sheep, from one superior to another, neither the law which we now propose, nor any other law, will of itself give freedom. It is of little use to direct the judge to punish unless we can teach the sufferer to complain.

We have thought it right to state this, lest we should mislead his Lordship in Council into an opinion that the law, framed as we propose to frame it, will really remove all the evils of slavery, and that nothing more will remain to be done. So far are we from thinking that the law, as we propose to frame it, will of itself effect a great practical change, that we greatly doubt whether even a law abolishing slavery would of itself effect any great practical change. Our belief is that, even if slavery were expressly abolished, it might, and would, in some parts of India, still continue to exist in practice. We trust, therefore, that his Lordship in Council will not consider the measure which we now recommend as of itself sufficient to accomplish the benevolent ends of the British Legislature, and to relieve the Indian Government from its obligation to watch over the interests of the slave population.

NOTE (C)

ON THE CHAPTER OF OFFENCES AGAINST THE STATE

His Lordship in Council will perceive that, in this chapter, we have provided only for offences against the

Government of India, and that we have made no mention of offences against the General Government of the British empire. We have done so because it appears to us doubtful to what extent his Lordship in Council is competent to legislate respecting such offences. The act of Parliament which defines the legislative power of the Council of India especially prohibits that body from making any law "which shall in any way affect any prerogative of the Crown or the authority of Parliament, or any part of the unwritten laws, or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend, in any degree, the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the said territories."

It might be argued that these words relate only to laws affecting the rights of the Crown and of Parliament, and not to laws affecting the penal sanctions of those rights, and that, therefore, though the Governor-General in Council has no power to absolve the King's subjects from their allegiance, he has power to fix the punishment to which they shall be liable for violating their allegiance. It seems to us, however, that there is the closest connection in this case between the right and the penal sanction ; that a power to alter the sanction amounts to a power to abolish the right ; and that Parliament, which withheld from the Indian Legislature one of those powers, cannot be supposed to have intended to grant the other.

If the Governor-general in Council has the legal power to fix the punishment of a subject who should, in the territories of the East India Company, conspire the death of the King, or levy war against the King,

then the Governor-general in Council has the legal power to fix that punishment at a fine of one anna; and it is plain that a law which should fix such a fine as the only punishment of regicide and rebellion, would be a law virtually absolving all subjects within the territories of the East India Company from their allegiance.

This part of the penal law, therefore, we have not ventured to touch. We leave it to the Imperial Legislature. But we trust that we may be permitted to suggest to his Lordship in Council that the early attention of the Home authorities should be called to this subject.

There is no doubt that the criminal statute law of England is not binding generally on a native of India in the Mofussil. Whether the statute law relating to treason be binding on such a native is a question with respect to which we do not venture to give a decided opinion. It seems to us exceedingly doubtful whether that part of the statute law be binding on such a native. It is quite certain that no court has ever enforced it against such a native; and that, in the opinion of many respectable and intelligent judicial officers in the service of the Company, it could not legally be enforced against such a native. Nor are the Company's judicial officers, by whom alone such a native can legally be tried, likely to be accurately acquainted with the statute law of England on the subject of treason, or with the mass of constructions and precedents by which that law has been overlaid. If such a native be not punishable under the English statute law of treason, it is difficult to say under what law he could be punished for that crime. The regulations contain nothing on the subject. The Council of India, we conceive, is not competent to legislate respecting it. The Mahometan law

might possibly be so violently strained as to reach it in Bengal and in the Madras Presidency; and in the Bombay Presidency it might possibly be brought within that clause which arms the courts with an enormous discretion in cases in which they conceive that morality and social order require protection. But there are, in our opinion, strong reasons against retaining either the Mahometan penal law, or the sweeping clause of the Bombay Regulations, to which we have referred.

It may be added that the provision of the Bombay Regulations, to which we have referred, applies only to persons who profess a religion with which a system of penal law is inseparably connected. Unless, therefore, the English statute law on the subject of treason applies to natives in the Mofussil, a point respecting which we entertain great doubt, a native Christian who should, at Surat, assist the levying of war, not against the Company's Government, but against the British Crown, would be liable to no punishment whatever.

This anomalous state of things may be, in some degree, explained by the singular manner in which the British empire grew up in India. The East India Company was, during a long course of years, in theory at least, under two masters. It was subject to the King of England; it was subject also to the great Mogul. It derived its corporate existence from the British Parliament. It held its territorial possessions by a grant from the Durbar of Delhi. The situation of the native subjects of the Company bore some analogy to that of the inhabitants of Mindelheim, while that fief of the empire was held by the Duke of Marlborough. The inhabitants of Mindelheim were sub-

jects of the Duke of Marlborough, but they owed no allegiance to the English Crown, though their sovereign was subject to that crown. It was in this way that the British empire in India originated. It was long considered as a wise policy to disguise the real power of the English under the forms of vassalage, and to leave to the Mogul and his Viceroys the empty honors of a sovereignty which was really held by the Company. This policy was abandoned slowly and by imperceptible degrees. The recognition of the supremacy of the King of Delhi appeared on the seal of the British government down to a late period, and on its coin down to a still later period. A great change has, indeed, taken place since the grant of the Dewannee of the lower provinces to the Company, but it has taken place so gradually, that, though it would be absurd to deny that the natives of British India are now subjects of his Majesty, it would be impossible to point out the particular time when they became so.

To these circumstances we attribute most of the anomalies which are to be found in the legal relation subsisting between the natives of British India and the general government of the empire. It seems highly desirable that the Imperial Legislature should do what cannot be done by the Local Legislature, and should pass a law of high-treason for the territories of the East India Company. As far, indeed, as respects the royal person, the present state of the law, though in theory unseemly, is not likely to cause any practical evil. It is highly improbable that any English king will visit his Indian dominions, or that any plot, having for its object the death of an English king, will ever extend its ramifications to India. But it is by no

means improbable that persons residing in the territories of the East India Company may be parties to the levying of war against the British Crown, without violating any local regulation. If any insurrection were to take place in any of the British dominions in the Eastern Seas—in Ceylon, for example, or in Mauritius—it is by no means improbable that persons residing within the Company's territories might furnish information and stores to the rebels. And if this were done by a person not subject to the jurisdiction of the courts established by Royal Charter, we are satisfied that there would be the most serious difficulty in bringing the criminal to legal punishment.

We have, his Lordship in Council will perceive, made the abetting of hostilities against the government, in certain cases, a separate offence, instead of leaving it to the operation of the general law laid down in the chapter on abetment. We have done so for two reasons. In the first place, war may be waged against the government by persons in whom it is no offence to wage such war, by foreign princes and their subjects. Our general rules on the subject of abetment would apply to the case of a person residing in the British territories, who should abet a subject of the British government in waging war against that government; but they would not reach the case of a person who, while residing in the British territories, should abet the waging of war by any foreign prince against the British government. In the second place, we agree with the great body of legislators in thinking that, though in general a person who has been a party to a criminal design which has not been carried into effect, ought not to be punished so severely as if that design

had been carried into effect, yet an exception to this rule must be made with respect to high offences against the State ; for State crimes, and especially the most heinous and formidable State crimes, have this peculiarity, that if they are successfully committed, the criminal is almost always secure from punishment. The murderer is in greater danger after his victim is despatched than before. The thief is in greater danger after the purse is taken than before. But the rebel is out of danger as soon as he has subverted the government. As the penal law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first beginnings of rebellion, against treasonable designs which have been carried no farther than plots and preparations. We have, therefore, not thought it expedient to leave such plots and preparations to the ordinary law of abetment. That law is framed on principles which, though they appear to us to be quite sound, as respects the great majority of offences, would be inapplicable here. Under that general law, a conspiracy for the subversion of the government would not be punished at all if the conspirators were detected before they had done more than discuss plans, adopt resolutions, and interchange promises of fidelity. A conspiracy for the subversion of the government, which should be carried as far as the gunpowder treason or the assassination plot against William the Third, would be punished very much less severely than the counterfeiting of a rupee, or the presenting of a forged check. We have, therefore, thought it absolutely necessary to make separate provision for the previous abetting of great State offences. The subsequent abetting of such offences

may, we think, without inconvenience, be left to be dealt with according to the general law.

NOTE (D)

ON THE CHAPTER OF OFFENCES RELATING TO THE ARMY AND NAVY

A FEW words will explain the necessity of having some provisions of the nature of those which are contained in this chapter.

It is obvious that a person who, not being himself subject to military law, exhorts or assists those who are subject to military law to commit gross breaches of discipline, is a proper subject of punishment. But the general law respecting the abetting of offences will not reach such a person ; nor, framed as it is, would it be desirable that it should reach him. It would not reach him, because the military delinquency which he has abetted is not punishable by this code, and therefore is not, in our legal nomenclature, an offence. Nor is it desirable that the punishment of a person not military, who has abetted a breach of military discipline, should be fixed according to the principles on which we have proceeded in framing the law of abetment. We have provided that the punishment of the abettor of an offence shall be equal or proportional to the punishment of the person who commits that offence ; and this seems to us a sound principle when applied only to the punishments provided by this code. But the military penal law is, and must necessarily be, far more severe than that under which the body of the people live.

The severity of the military penal law can be justified only by reasons drawn from the peculiar habits and duties of soldiers, and from the peculiar relation in which they stand to the government. The extension of such severity to persons not members of the military profession appears to us altogether unwarrantable. If a person, not military, who abets a breach of military discipline, should be made liable to a punishment regulated, according to our general rules, by the punishment to which such a breach of discipline renders a soldier liable, the whole symmetry of the penal law would be destroyed. He who should induce a soldier to disobey any order of a commanding officer would be liable to be punished more severely than a dacoit, a professional thug, an incendiary, a ravisher, or a kidnapper. We have attempted in this chapter to provide, in a manner more consistent with the general character of the code, for the punishment of persons who, not being military, abet military crimes.

NOTE (E)

ON THE CHAPTER OF THE ABUSE OF THE POWERS OF PUBLIC SERVANTS

This chapter is intended to reach offences which are committed by public servants, and which are of such a description that they can be committed by public servants alone.

We have found considerable difficulty in drawing the line between public servants and the great mass of the community. We hope that the description which we

have given in Clause 14 will be found to comprehend all those to whom it is desirable to bring under this part of the law, and we trust that, when the code of procedure is completed, this description may be made both more accurate and more concise.

Those offences which are common between public servants and other members of the community we leave to the general provisions of the code. If a public servant embezzles public money, we leave him to the ordinary law of criminal breach of trust. If he falsely pretends to have disbursed money for the public, and by this deception induces the government to allow it in his accounts, we leave him to the ordinary law of cheating. If he produces forged vouchers to back his statement, we leave him to the ordinary law of forgery. We see no reason for punishing these offences more severely when the government suffers by them than when private people suffer. A government, indeed, which does not consider the sufferings of private individuals as its own, is not only selfish but short-sighted in its selfishness. The revenue is drawn from the wealth of individuals, and every act of dishonest spoliation which tends to render individuals insecure in the enjoyment of their wealth is really an injury to the revenue. On every account, therefore, we think it desirable that the property of the State should, in general, be protected by exactly the same laws which are considered as sufficient for the protection of the property of the subject.

We are not without apprehension that we may be thought to have treated the transgressions of public servants too favorably, to have passed by without notice some malpractices which deserve punishment,

and where we have provided punishments, to have seldom made those punishments sufficiently severe.

It is true that we have altogether omitted to provide any punishment for some kinds of misconduct on the part of public servants. It is true, also that the punishments which we propose in this chapter are not generally proportioned either to the evil which the abuse of power produces, or to the depravity of a man who, having been intrusted with power for the public benefit, employs that power to gratify his own cupidity or revenge.

But it is to be remembered that there is a marked distinction between the penal clauses contained in this chapter and the other penal clauses of the code. In general a penal clause sets forth the whole punishment which can be inflicted on an offender by any public authority. The penalty of theft, of breach of trust, of cheating, of extortion, of assault, of defamation, has been fixed on the supposition that it is the whole penalty which the criminal is to suffer, and that no power in the State can make any addition to it. But the penalty of an offence committed by a public functionary in the exercise of his public functions has been fixed on the supposition that it will often be only a part, and a small part, of the penalty which he will suffer. It is in the power of the government to punish him for many acts which the law has not made punishable. It is in the power of the government to add to any sentence pronounced by the courts another sentence which will often be even more terrible. To a man whose subsistence is derived from official emoluments, whose habits are formed to official business, and whose whole ambition is fixed on official promotion,

degradation to a lower post is a punishment ; dismissal from the public service is a punishment sufficient even for a serious offence. The mere knowledge that his character has suffered in the opinion of those superiors on whom his advancement depends probably gives him as much pain as a heavy fine.

This is to a great degree the case in every country, and assuredly not less in India than in any other country. Indeed, those servants of the Company by whom all the higher offices in the Indian government are filled entertain a feeling about their situations very different from that which is found among political men in England. It is natural that they should entertain such a feeling. They are set apart at an early age as persons destined to hold offices in India. Their education is conducted at home with that view. They are transferred when just entering on manhood to the country which they are to govern. They pass the best years of their lives in acquiring knowledge which is most important to men who are to fill high situations in India, but which in any other walk of life would bring little profit and little distinction ; in mastering languages which, when they quit this country, are useless to them ; in studying a vast and complicated system of revenue which is altogether peculiar to the East ; in becoming intimately acquainted with the interests, the resources, and the projects of potentates whose very existence is unknown even to educated men in Europe. To such a man, dismissal from the service of the Indian government is generally a very great calamity. His life has been thrown away. It has been passed in acquiring information and experience which, in any pursuit to which he may now betake himself, will be of

little or no service to him. There are, therefore, few covenanted servants of the Company who, even if they were men destitute of all honorable feeling, would not look on dismissal from the service as a most severe punishment. But the covenanted servants of the Company are English gentlemen ; that is to say, they are persons to whom the ruin of their fortunes is less terrible than the ruin of their characters. There are few of them, we believe, to whom an intimation that their integrity was suspected by the government would not give more pain than a sentence of six months' imprisonment for an offence not of a disgraceful kind, and to many of them death itself would appear less dreadful than ignominious expulsion from the body of which they are members.

Thus dismissal from the public service is a punishment exceedingly dreaded by public functionaries, and most dreaded in this country by the highest class of public functionaries. Nor is this all. It is not merely a severe punishment, but it is also a punishment which is far more likely to be inflicted than many punishments which are less severe. Those who are legally competent to inflict it are bound by no rules, except those which their own discretion may impose on them. For what kind and degree of delinquency they shall inflict it, by what evidence that delinquency shall be established, by what tribunals the inquiry shall be conducted ; nay, whether there shall be any delinquency, any evidence, any tribunal, is absolutely in their breasts. They may inflict this punishment, and may be justified in inflicting it, for transgressions which are not susceptible of precise definition, and which have not been substantiated by decisive proof. They may be justified in

inflicting it, because many petty circumstances, each of which separately would be too trivial for notice, have, when taken together, satisfied them that a functionary is unfit for any public employment. They may be justified in inflicting it, because they strongly suspect him of guilt which they cannot bring home to him by evidence to which a Zillah judge would pay any attention. Most of what we have said of the punishment of dismissal from office applies, though not in the same degree, to the slighter punishments of censure, suspension, and removal from a higher to a lower post.

We have shown that public functionaries are liable not only to the punishments provided by this code, but also to other peculiar punishments of great severity. It seems, therefore, to follow that, if those who possess the power of inflicting these peculiar punishments can be trusted, some malpractices of public functionaries may be safely unnoticed in this code, and that other malpractices need not be visited with legal punishment so rigorous as their enormity might seem to merit. The executive government, in our opinion, deserves to be trusted. At all events, it must be trusted ; for it is quite certain that no laws will prevent corruption and oppression on the part of the servants of the Indian government, if that government is inclined to screen the offenders. The government, to say nothing of the vast influence which it can indirectly exert, appoints, promotes, and removes judges at its discretion. It can remit any sentence pronounced by the courts. It can, therefore, if it be not honestly disposed to correct official abuses, render any penal clauses directed against such abuses almost wholly inoperative. And if it be honestly disposed, as we firmly believe that it is,

to correct official abuses, it will use for that purpose its power of rewarding and punishing its servants.

It will be seen that we propose, under Clause 138, to punish with imprisonment for a term not exceeding three years, or with fine, or both, the corruption of public functionaries. The punishment of fine will, we think, be found very efficacious in cases of this description, if the judges exercise the power given them as they ought to do, and compel the delinquent to deliver up the whole of his ill-gotten wealth.

The mere taking of presents by a public functionary, when it cannot be proved that such presents were corruptly taken, we have made penal only in one particular case, to which we shall hereafter call the attention of his Lordship in Council. We have not made the taking of presents by public functionaries generally penal; because, though we think that it is a practice which ought to be carefully watched and often severely punished, we are not satisfied that it is possible to frame any law on the subject which would not be rendered inoperative either by its extreme severity or by its extreme laxity. Absolutely to prohibit all public functionaries from taking presents would be to prohibit a son from contributing to the support of a father, a father from giving a portion with a daughter, a brother from extricating a brother from pecuniary difficulties. No government would wish to prevent persons intimately connected by blood, by marriage, or by friendship from rendering services to each other; and no tribunals would enforce a law which should make the rendering of such services a crime. Where no such close connection exists, the receiving of large presents by a public functionary is generally a very suspicious

proceeding. But a lime, a wreath of flowers, a slice of betel-nut, a drop of otto of roses poured on his handkerchief, are presents which it would, in this country, be held churlish to refuse, and which cannot possibly corrupt the most mercenary of mankind. Other presents of more value than these may, on account of their peculiar nature, be accepted, without affording any ground for suspicion. Luxuries socially consumed according to the usages of hospitality are presents of this description. It would be unreasonable to treat a man in office as a criminal for drinking many rupees-worth of champagne in a year at the table of an acquaintance ; though if he were to suffer one of his subordinates to accept even a single rupee in specie, he might deserve exemplary punishment.

It appears to us, therefore, that the taking of presents where a corrupt motive cannot be proved, ought not in general to be a crime cognizable by the courts. Whether in any particular case it ought to be punished or not will depend on innumerable circumstances, which it is impossible accurately to define—on the amount of the present, on the nature of the present, on the relation in which the giver and receiver stand to each other. Suppose that a wealthy English agent, who is interested in a young civil servant of the Company, were to pay the debts of that civil servant ; or, suppose that a resident were to furnish money to enable his invalid assistant to proceed to the Cape. In these transactions there might be nothing which the most scrupulous could disapprove ; but the case would be widely different if a wealthy native Zemindar were to pay the debts of a collector of his district, or if any of the officers at the residency were to receive money from

the minister of a foreign power. In such a case, though it might be impossible to prove a corrupt motive, we think that the government would be inexcusable if it suffered the delinquent to remain in the public service.

We have hitherto put only extreme cases; cases in which it is clear that the taking of presents ought not to be punished, or cases in which it is clear that the taking of presents ought to be severely punished. But between the extremes lie an immense variety of cases, some of which call for severe punishment, some for milder punishment, some for censure, some for gentle admonition, while some ought to be tolerated. We have said that if a collector were to accept a large present of money from a wealthy Zemindar, he would deserve to be turned out of the service. But if the collector were to accept such a present from an English indigo planter, the case would be different. The indigo planter might be his uncle, his brother, his father-in-law, his brother-in-law. In that case there might be no impropriety in the transaction. Again, if a native in the public service were to accept a present from a Zemindar who was connected with him by blood, marriage, or friendship, there might be no impropriety in the transaction.

By the Act of Parliament to which the malpractices of the first British conquerors of India gave occasion, the servants of the Company were forbidden to receive presents from Asiatics, but were left at liberty to receive presents from Europeans. The legislators of that time appear to have proceeded on the supposition that the servants of the Company would all be Englishmen, and that no Englishman would ever have any such

connection with any native as would render the receiving of presents from that native unobjectionable.

Natives are now declared by law to be competent to hold any post in the Company's service. It would evidently be improper to interdict an Asiatic in the service of the Company from receiving pecuniary assistance from his Asiatic father, or from receiving a portion with an Asiatic bride. It seems to us, therefore, that the rule laid down by Parliament, though it will still be in many cases an excellent rule of evidence, ought not, under the altered circumstances of India, to continue to be a rule of law.

Again, it ought to be remembered that the European and native races are not at present divided from each other by so strong a line of separation as at the time when the British Parliament laid down the rule which we are considering. The interval in still wide ; by it no means appears to us, as it appeared to the legislators of the last generation, to be impassable. It is evident, therefore, that the rule formerly laid down by Parliament is constantly becoming less and less applicable to the state of India. On these grounds we have thought it advisable to leave this matter to the executive government, which will doubtless promulgate, from time to time, such rules as it may deem proper, and will enforce submission to those rules by visiting its disobedient servants with censure, with degradation, or with dismissal from the public service, according to the circumstances of every case.

We have thought it desirable to make one exception. We propose that a judge who accepts any valuable thing by way of gift from one whom he knows to be a plaintiff or a defendant in any cause pending in his

court shall be severely punished. This rule is not to extend to the taking of food in the interchange of ordinary civilities. It appears to us that the objections which we have made to a general law prohibiting the receipt of presents by public functionaries do not apply to this clause. The rule is clear and definite. The practice against which it is directed is not a practice which ought sometimes to be encouraged, and sometimes to be tolerated. It ought always, and under all circumstances, to be discouraged. It therefore appears to unite all the characteristics which mark out a practice as a fit object of penal legislation.

The only other penal provision of this chapter to which we think it necessary to call the attention of his Lordship in Council is that which is contained in Clause 149.

We are of opinion that the preceding clauses, and the power which the government possesses of suspending, degrading, and dismissing public functionaries, will be found sufficient to prevent gross abuses. But there will remain a crowd of petty offences with which it is very difficult to deal, offences which separately are too slight to be brought before the criminal tribunals, which will sometimes be committed by good public servants, and which therefore it would be inexpedient to punish by removal from office, yet which will be very often committed if they can be committed with impunity, and which, if often committed, would impair the efficiency of all departments of the administration, and would produce infinite vexation to the body of the people.

By the existing laws of all the presidencies, a summary judicial power is given in certain cases to certain

official superiors for the purpose of restraining their subordinates. We are inclined to believe that this is a wholesome power, and that it has, in the great majority of cases, been honestly employed for the protection of the public. We propose, therefore, to adopt the principle, and to make the system uniform through all the provinces of the empire, and through all the departments of the public service. We propose that a public functionary who is guilty of neglect of duty, who treats his superiors with disrespect, or who disobeys the lawful orders given by them for his guidance, shall be liable to a fine not exceeding the official pay which he receives in three months. In default of payment he will be liable (see Clause 54) to seven days' imprisonment.

In the code of procedure we think that it will be proper to provide that the power of awarding this penalty shall be given, not to the ordinary tribunals, but to the official superiors of the offender. Thus, if a subordinate officer employed in the collection of revenue should incur this penalty, it will be imposed by the collector, and the appeal will probably be to the Board of Revenue. If an officer employed to execute the process of a Zillah court should neglect his duty, the fine will be imposed by the Zillah judge, and the appeal will probably be to the Sudder court. If the offence should be committed by a tide-waiter, the collector of customs for the port will probably impose the penalty, and the appeal will be to the Board of Customs. These instances we give merely as illustrations of what, at present, appears to us desirable. The details of this part of the law of procedure cannot be arranged without much consideration and inquiry.

One important question still remains to be con-

The Roza at Mehmoodabad in Guzerat.

From a drawing by Captain Grindlay.

sidered. We are of opinion that we have provided sufficient punishment for the public servant who receives a bribe. But it may be doubted whether we have provided sufficient punishment for the person who offers it. The person who, without any demand, express or implied, on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable under the general rule contained in Clause 88 as an instigator. But the person who complies with a demand, however signified, on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. We do not propose that such a person shall be liable to any punishment, and, as this omission may possibly appear censurable to many persons, we are desirous to explain our reasons.

In all states of society the receiving of a bribe is a bad action, and may properly be made punishable. But whether the giving of a bribe ought or ought not to be punished, is a question which does not admit of a short and general answer. There are countries in which the giver of a bribe ought to be more severely punished than the receiver. There are countries, on the other hand, in which the giving of a bribe may be what it is not desirable to visit with any punishment. In a country situated like England, the giver of a bribe is generally far more deserving of punishment than the receiver. The giver is generally the tempter ; the receiver is the tempted. The giver is generally rich, powerful, well educated ; the receiver, needy and ignorant. The giver is under no apprehension of suffering any injury if he refuses to give. It is not by fear, but by ambition, that he is generally induced to part with

his money. Such a person is a proper subject of punishment. But there are countries where the case is widely different; where men give bribes to magistrates from exactly the same feeling which leads them to give their purses to robbers or to pay ransom to pirates; where men give bribes because no man can, without a bribe, obtain common justice. In such countries we think that the giving of bribes is not a proper subject of punishment. It would be as absurd, in such a state of society, to reproach the giver of a bribe with corrupting the virtue of public servants, as it would be to say that the traveller who delivers his money when a pistol is held to his breast corrupts the virtue of the highwayman.

We would by no means be understood to say that India, under the British government, is in a state answering to this last description. Still we fear it is undeniable that corruption does prevail to a great extent among the lower class of public functionaries; that the power which those functionaries possess renders them formidable to the body of the people; that in the great majority of cases the receiver of the bribe is really the tempter, and that the giver of the bribe is really acting in self-defence.

Under these circumstances, we are strongly of opinion that it would be unjust and cruel to punish the giving of a bribe in any case in which it could not be proved that the giver had really by his instigations corrupted the virtue of a public servant, who, unless temptation had been put in his way, would have acted uprightly.

NOTE (F)

ON THE CHAPTER OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

We were at first disposed to have one chapter for contempts of the lawful authority of courts of justice, another for contempts of the lawful authority of officers of revenue, and a third for contempts of the lawful authority of officers of police. But we soon found that these three chapters would be almost the same, word for word. It appeared to us also that, in the existing state of the civil administration of India, the separation which we were at first inclined to make would produce nothing but perplexity. The functions of magistrate and collector are very frequently united in the same person ; and that person is perpetually called upon, both as magistrate and collector, to perform acts which are judicial in their nature, to try offenders, and to decide litigated questions of civil right. While the division of labor between the different departments of the public service is so imperfect, it would be idle to make nice distinctions between those departments in the penal code.

In order to frame this chapter, we went carefully through the existing regulations of the three Presidencies, and extracted the numerous penal provisions which are intended to enforce obedience to the lawful authority of different classes of public servants. Having collected these provisions, and discarded a very few we thought obviously unreasonable or superfluous, we proceeded to analyze the rest.

It is possible that our analysis may be imperfect ;

and it is highly probable that the punishments which we propose may require some modification. It will be seen that we propose the same punishment for all the offences which fall, in our analysis, under the same head. For example ; one head is the omitting to obey the lawful summons of a public servant. For this offence we have only one punishment ; and this punishment will be applicable alike to the witness who omits to obey the lawful summons of the court of Sudder Dewanny Adawlut, to the witness who omits to obey the lawful summons of a Moonsiff, to the putwarree who in Bengal omits to obey the lawful summons of the collector, to the ryot who in the Madras Presidency omits to obey the lawful summons of the collector, to the trader who in the same presidency omits to attend a meeting lawfully convened for the distribution of the Vizabuddy. In the same manner we propose one punishment for the captain of a ship in the Hoogly who illegally refuses to admit a custom-house officer on board, for a land-holder who refuses to admit a surveyor lawfully commissioned by the collector to measure land, for a distiller who refuses to admit the proper officer to examine his distillery. Again, we propose the same punishment for the person who resists the taking of goods in execution under a decree of a court of justice, for the person who resists the taking of property by way of distress for arrears of revenue, for the person who resists the seizure of salt by lawful authority, for the person who resists the seizure of a boat in default of toll by lawful authority, for the person who resists the seizure of smuggled goods by lawful authority.

We are sensible that there may be reasons which

have escaped us for making distinctions in punishment between offences which in our classification fall under the same head. But it is impossible to find in any single person, or in any small body of persons, so extensive and minute a knowledge of every province of India, and of every department of the public service, as would be a security against errors of this description. We have no doubt that if his Lordship in Council directs the code to be published for general information, valuable suggestions will be received from servants of the Company in different parts of India, and that those suggestions will enable the government to modify the provisions which we propose, by introducing proper aggravations and mitigations.

The only provision which appears to us to require any further explanation is that which is contained in Clause 182.

We have, to the best of our ability, framed laws against acts which ought to be repressed at all times and places, or at times and places which it is in our power to define. But there are acts which at one time and place are perfectly innocent, and which at another time or place are proper subjects of punishment; nor is it always possible for the legislator to say at what time or at what place such acts ought to be punishable.

Thus it may happen that a religious procession which is in itself perfectly legal, and which, while it passes through many quarters of a town, is perfectly harmless, cannot without great risk of tumult and outrage be suffered to turn down a particular street inhabited by persons who hold the ceremony in abhorrence, and whose passions are excited by being forced to witness it. Again, there are many Hindoo rights which in

Hindoo temples and religious assemblies the law tolerates, but which could not with propriety be exhibited in a place which English gentlemen and ladies were in the habit of frequenting for purposes of exercise. Again, at a particular season hydrophobia may be common among the dogs at a particular place, and it may be highly advisable that all people at that place should keep their dogs strictly confined. Again, there may be a particular place in town which the people are in the habit of using as a receptacle for filth. In general this practice may do no harm ; but an unhealthy season may arrive when it may be dangerous to the health of the population, and under such circumstances it is evidently desirable that no person should be allowed to add to the nuisance. It is evident that it is utterly impossible for the legislature to mark out the route of all the religious processions in India, to specify all the public walks frequented by English ladies and gentlemen, to foresee in what months and in what places hydrophobia will be common among dogs, or when a particular dunghill may become dangerous to the health of a town. It is equally evident that it would be unjust to punish a person who cannot be proved to have acted with bad intentions for doing to-day what yesterday was a perfectly innocent act, or for doing in one street what it would be perfectly innocent to do in another street, without giving him some notice.

What we propose, therefore, is to empower the local authorities to forbid acts which these authorities consider as dangerous to the public tranquillity, health, safety, or convenience, and to make it an offence in a person to do anything which that person knows to be so forbidden, and which may endanger the public tran-

quillity, health, safety, or convenience. It will be observed that we do not give to the local authorities the power of arbitrarily making anything an offence ; for unless the court before which the person who disobeys the order is tried shall be of opinion that he has done something tending to endanger the public tranquillity, health, safety, or convenience, he will be liable to no punishment. The effect of the order of the local authority will be merely to deprive the person who knowingly disobeys the order of the plea that he had no bad intentions. He will not be permitted to allege that if he has caused harm, or risk of harm, it was without his knowledge.

Thus, if in a town where no order for the chaining up of dogs has been made, A suffers his dog to run about loose, A will be liable to no punishment for any mischief which the animal may do, unless it can be shown that A knew the animal to be dangerous. But if an order for confining dogs has been issued, and if A knew of that order, it will be no defence for him to allege, and even to prove, that he believed his dog to be perfectly harmless. If the court think that A's disobedience has caused harm, or risk of harm, A will be liable to punishment. On the other hand, if the court think that there was no danger, and that the local order was a foolish one, A will not be liable to punishment.

We see some objections to the way in which we have framed this part of the law ; but we are unable to frame it better. On the one hand, it is, as we have shown, absolutely necessary to have some local rules which shall not require the sanction of the legislature. On the other hand, we are sensible that there is the greatest reason to apprehend much petty tyranny and vexa-

tion from such rules ; and this although the framers of those rules may be very excellent and able men. There is scarcely any disposition in a ruler more prejudicial to the happiness of the people than a meddling disposition. Yet experience shows us that it is a disposition which is often found in company with the best intentions, with great activity and energy, and with a sincere regard for the interest of the community. A public servant of more than ordinary zeal and industry, unless he have very much more than ordinary judgment, is the very man who is likely to harass the people under his care with needless restrictions. We have, therefore, thought it necessary to provide that no person should be punished merely for disobeying a local order, unless it be made to appear that the disobedience has been attended with evil, or risk of evil. Thus no person will be punished for disobeying an idle and vexatious order.

The mode of promulgating these orders belongs to the code of procedure, which will, of course, contain such provisions as may be required for the purpose of enabling the government to exercise a constant and efficient control over its local officers.

NOTE (G)

ON THE CHAPTER OF OFFENCES RELATING TO PUBLIC JUSTICE

MANY offences which interfere with the administration of justice are sufficiently provided for in other chapters, particularly in the chapter relating to contempts of the lawful authority of public servants. There

still remain, however, some offences of that description for which the present chapter is intended to provide.

The rules which we propose touching the offence of attempting to impose on a court of justice by false evidence differ from those of the English law, and of the codes which we have had an opportunity of consulting.

It appears to us, in the first place, that the offence which we have designated as the fabricating of false evidence is not punished with adequate severity under any of the systems to which we refer. This may perhaps be because the offence, in its aggravated forms, is not one of very frequent occurrence in Western countries. It is notorious, however, that in this country the practice is exceedingly common, and for obvious reasons. The mere assertion of a witness commands far less respect in India than in Europe, or in the United States of America. In countries in which the standard of morality is high, direct evidence is generally considered as the best evidence. In England assuredly it is so considered, and its value, as compared with the value of circumstantial evidence, is perhaps overrated by the great majority of the population. But in India we have reason to believe that the case is different. A judge, after he has heard a transaction related in the same manner by several persons who declare themselves to be eye-witnesses of it, and of whom he knows no harm, often feels a considerable doubt whether the whole, from beginning to end, be not a fiction, and is glad to meet some circumstance, however slight, which supports the story, and which is not likely to have been devised for the purpose of supporting the story.

Hence, in England, a person who wishes to impose on a court of justice knows that he is likely to succeed

best by perjury, or subornation of perjury. But in India, where a judge is generally on his guard against direct false evidence, a more artful mode of imposition is frequently employed. A lie is often conveyed to a court, not by means of witnesses, but by means of circumstances, precisely because circumstances are less likely to lie than witnesses. These two modes of imposing on the tribunals appear to us to be equally wicked, and equally mischievous. It will, indeed, be harder to bring home to an offender the fabricating of false evidence than the giving of false evidence. But wherever the former offence is brought home, we would punish it as severely as the latter. If A puts a purse in Z's bag, with the intention of causing Z to be convicted as a thief, we would deal with A as if he had sworn that he saw Z take a purse. If A conceals in Z's house a paper written in imitation of Z's hand, and purporting to be a plan of a treasonable conspiracy, we would deal with A as if he had sworn that he was present at a meeting of conspirators at which Z presided.

The exception in Clause 190 is in strict conformity with this principle. We propose to treat the giving of false evidence and the fabricating of false evidence in exactly the same way. We have no punishment for false evidence given by a person when on his trial for an offence, though we conceive that such a person ought to be interrogated. The grounds on which this part of the law is founded will shortly be submitted to government in our report on the law of evidence. As we do not propose to punish a prisoner for lying at the bar in order to escape punishment, so we do not propose to punish him for fabricating evidence with the view of escaping punishment, unless he also contem-

plated some injury to others as likely to be produced by the evidence so fabricated. If A stabs Z, and afterwards on his trial denies that he stabbed Z, we do not propose to punish A as a giver of false evidence. And on the same principle, if A, after having stabbed Z, in order to escape detection, disposes Z's body in such a manner as is likely to lead a jury to think the death accidental, we do not propose to punish A as the fabricator of false evidence.

It appears to us that the offence of attempting to impose on a court of justice by false evidence is an offence of which there are numerous grades, some of which may be easily defined. The authors of the French code have not overlooked these circumstances, though they have not, in our opinion, marked the gradations very successfully. The English law makes no distinction whatever between the man who has attempted to take away his neighbor's life by false swearing, and the man who has strained his conscience to give an undeserved good character to a boy accused of a petty theft. The former is punished far too leniently ; the latter perhaps too severely.

The giving of false evidence must always be a grave offence. But few points in penal legislation seem to us clearer than that the law ought to make a distinction between that kind of false evidence which produces great evils, and that kind of false evidence which produces comparatively slight evils.

As the ordinary punishment of false evidence, we propose imprisonment for a term of not more than seven years, nor less than one year. If the false evidence is given or fabricated with intent to cause a person to be convicted of a grave offence not capital, we propose

that the person who gives or fabricates such evidence may be punished with the punishment of the offence which he has attempted to fix on another. If the false evidence be given or fabricated with the intention of causing death, we propose to punish it in the same manner in which we propose to punish the worst attempts to murder. If such false evidence actually causes death, the person who has given or fabricated it falls under the definition of murder, and is liable to capital punishment. In this last point, the law, as we have framed it, agrees with the old law of England, which, though in our opinion just and reasonable, has become obsolete.

We think this the proper place to notice an offence which bears a close affinity to that of giving false evidence, and which we leave for the present unpunished, only on account of the defective state of the existing law of procedure—we mean the crime of deliberately and knowingly asserting falsehoods in pleading. Our opinions on this subject may startle persons accustomed to that boundless license which the English law allows to mendacity in suitors. On what principle that license is allowed we must confess ourselves unable to discover. A lends Z money ; Z repays it. A brings an action against Z for the money, and affirms in his declaration that he lent the money, and has never been repaid. On the trial A's receipt is produced. It is not doubted. A himself cannot deny that he asserted a falsehood in his declaration. Ought A to enjoy impunity? Again: Z brings an action against A for a debt which is really due. A's plea is a positive averment that he owes Z nothing. The case comes to trial ; and it is proved by overwhelming evidence that the debt is a just debt. A

does not even attempt a defence. Ought A in this case to enjoy impunity? If, in either of the cases which we have stated, A were to suborn witnesses to support the lie which he has put on the pleadings, every one of these witnesses, as well as A himself would be liable to severe punishment. But false evidence in the vast majority of cases springs out of false pleading, and would be almost entirely banished from the courts if false pleading could be prevented:

It appears to us that all the marks which indicate that an act is a proper subject for legal punishment meet in the act of false pleading. That false pleading always does some harm is plain. Even when it is not followed up by false evidence, it always delays justice. That false pleading produces any compensating good to atone for this harm has never, as far as we know, been even alleged. That false pleading will be more common if it is unpunished than if it is punished, appears as certain as that rape, theft, embezzlement, would, if unpunished, be more common than they now are. It is evident, also that there will be no more difficulty in trying a charge of false pleading than in trying a charge of false evidence. The fact that a statement has been made in pleading will generally be more clearly proved than the fact that a statement has been made in evidence. The falsehood of a statement made in pleading will be proved in exactly the same manner in which the falsehood of a statement made in evidence is proved. Whether the accused person knew that he was pleading falsely, the courts will determine on the same evidence on which they now determine whether a witness knew that he was giving false testimony.

We have as yet spoken only of the direct injury produced to honest litigants by false pleading. But this injury appears to us to be only a part, and perhaps not the greatest part, of the evil engendered by the practice. If there be any place where truth ought to be held in peculiar honor, from which falsehood ought to be driven with peculiar severity, in which exaggerations, which elsewhere would be applauded as the innocent sport of the fancy, or pardoned as the natural effect of excited passion, ought to be discouraged, that place is a court of justice. We object, therefore, to the use of legal fictions, even when the meaning of those fictions is generally understood, and we have done our best to exclude them from this code. But that a person should come before a court, should tell that court premeditated and circumstantial lies for the purpose of preventing or postponing the settlement of a just demand, and that by so doing he should incur no punishment whatever, seems to us to be a state of things to which nothing but habit could reconcile wise and honest men. Public opinion is vitiated by the vicious state of the law. Men who, in any other circumstances, would shrink from falsehood, have no scruple about setting up false pleas against just demands. There is one place, and only one, where deliberate untruths, told with the intent to injure, are not considered as discreditable, and that place is a court of justice. Thus the authority of the tribunals operates to lower the standard of morality, and to diminish the esteem in which veracity is held ; and the very place which ought to be kept sacred from misrepresentations, such as would elsewhere be venial, becomes the only place where it is considered as idle scrupulosity to shrink from deliberate falsehood.

We consider a law for punishing false pleading as indispensably necessary to the expeditious and satisfactory administration of justice, and we trust that the passing of such a law will speedily follow the appearance of the code of procedure. We do not, as we have stated, at present propose such a law, because, while the system of pleading remains unaltered in the courts of this country, and particularly in the courts established by Royal Charter, it will be difficult, or, to speak more properly, impossible, to enforce such a law. We have, therefore, gone no farther than to provide a punishment for the frivolous and vexatious instituting of civil suits, a practice which, even while the existing systems of procedure remain unaltered, may, without any inconvenience, be made an offence. The law on the subject of false evidence will, as it appears to us, render unnecessary any law for punishing the frivolous and vexatious preferring of criminal charges.

No other part of this chapter appears to require comment.

NOTE (H)

ON OFFENCES RELATING TO THE REVENUE

In order to frame this chapter, we took a course similar to that which we took with the chapter relating to contempts of the lawful authority of public servants. We went carefully through the revenue laws of the three presidencies, extracted the penal clauses, analyzed them, and reduced them to a small number of general heads.

His Lordship in Council will perceive that we have not thought it proper to insert in the code any provision for the confiscation of property on the ground of a breach of the revenue laws, and that we leave the existing rules on that subject untouched. We have done so, because it does not appear to us that such confiscation is in strictness a punishment. It has, indeed, much in common with punishment ; but it appears to us that there is a marked distinction, and that confiscation of the sort which is authorized in many parts of the regulations of the three presidencies would, considered in the light of a punishment, be anomalous and indefensible. It is a proceeding directed, not against the person who has broken the law, but against the thing with respect to which the law has been broken. It is not necessary that any misconduct should be proved, that any accusation should be brought, that any particular individual should be in the contemplation of the authority which directs the confiscation. Nay, the revenue laws authorize confiscation, not only in cases where misconduct is not proved, but in cases where it is proved that there has been no misconduct in any quarter ; and, where there has been misconduct, those laws authorize the confiscation of the property of a person who is proved to have had no share in the misconduct.

To give a single example : If tobacco be found in the island of Bombay after the time at which it ought to be exported thence, it is confiscated, together with the receptacles which contain it, the substances in which it is packed, and the carriages and animals which are employed to convey it. This, which is a fair specimen of revenue laws respecting confiscation, is evidently ob-

jectionable, considered as a penal law. The carriages, the animals, the vessels, the tobacco itself, may all be the property of persons who are not in the least to blame. Indeed, we know that under this law the boxes of gentlemen have repeatedly been seized, because the servants who packed them had concealed tobacco in the baggage. Such a law, put into the form of a penal provision, would be too grotesque to be a subject of serious argument. It would, in the phraseology of our code, run thus : " If any person places contraband tobacco in the baggage of any other person, the person in whose baggage such contraband tobacco is placed shall be punished with the confiscation of such baggage." And the following illustration would make the law, if possible, still more ridiculous: " Contraband tobacco is hidden in A's baggage, by A's servant, without A's knowledge, and contrary to A's express command. A has committed the offence defined in this clause."

It is evident, therefore, that this law, and many other laws of the same kind, must be defended on principles quite different from those on which penal legislation ought to be conducted. They must be defended, not as being penal laws directed against the guilty, but rather as being sharp and stringent laws of civil procedure which are intended to enable the government to obtain its due with speed and certainty, at the cost whether of the guilty or of the innocent. Viewing them in this light, and knowing as we know that they are greatly mitigated in practice by the lenity of the executive government, we consider them as justifiable ; but we are decidedly of opinion that they would be out of place in a penal code.

NOTE (I)

ON THE CHAPTER OF OFFENCES RELATING TO COIN

Most of the provisions in this chapter appear sufficiently intelligible without any explanation.

We have proposed that the government of India should follow the general practice of governments in punishing more severely the counterfeiting of its own coin than the counterfeiting of foreign coin. It appears to us peculiarly advisable, under the present circumstances of India, to make this distinction. It is much to be wished that the Company's currency may supersede the numerous coinages which are issued from a crowd of mints in the dominions of the petty princes of India. It has appeared to us that this object may be in some degree promoted by the law as we have framed it. That coinage, the purity of which is guarded by the most rigorous penalties, is likely to be the most pure ; and that coinage which is likely to be the most pure will be the most readily taken in the course of business.

It is not very probable that any person in this country will employ himself in making counterfeit sovereigns or shillings ; but should so improbable an event occur, we think that the King's coin should have the same protection which is given to the coin of the local government. It may, perhaps, be thought that in proposing laws for the protection of the King's coin, we have departed from the principle which we laid down in our note on the law of offences against the State, and that we should have acted more consistently in leaving the British currency to the care of the British legislature. It appears to us, however, that the offence

of coining, though, in an arbitrary classification, it may be called by the technical name of treason, is in substance an offence against property and trade, that it is an offence of very nearly the same kind with the forging of a bank-note, and that it would be an offence of exactly the same kind if the bank-note, like the notes of the Bank of England formerly, were in all cases legal tender, or if the coin, like the Company's gold mohur at present, were not legal tender. We do not, therefore, conceive that in proposing a law for punishing the counterfeiting of the King's coin, we are proposing a law which can reasonably be said to affect any of the royal prerogatives.

The distinction which we propose to make (see Clauses 241 and 242) between two different classes of utterers is marked in the French code ; and it is so obviously agreeable to reason and justice that we are surprised that, having been marked in that code, it should not have been adopted by Mr. Livingston. We are glad to perceive that the code of Bombay makes this distinction.

An utterer by profession, an utterer who is the agent employed by the coiner to bring counterfeit coin into circulation, is guilty of a very high offence. Such an utterer stands to the coiner in a relation not very different from that in which an habitual receiver of stolen goods stands to a thief. He makes coining a far less perilous and a far more lucrative pursuit than it would otherwise be. He passes his life in the systematic violation of the law, and in the systematic practice of fraud in one of its most pernicious forms. He is one of the most mischievous, and is likely to be one of the most depraved, of criminals. But a casual utterer,

an utterer who is not an agent for bringing counterfeit coin into circulation, but who, having heedlessly received a bad rupee in the course of his business, takes advantage of the heedlessness of the next person with whom he deals to pay that bad rupee away, is an offender of a very different class. He is undoubtedly guilty of a dishonest act, but of one of the most venial of dishonest acts. It is an act which proceeds not from greediness for unlawful gain, but from a wish to avoid, by unlawful means, it is true, what to a poor man may be a severe loss. It is an act which has no tendency to facilitate or encourage the operations of the coiner. It is an occasional act, an act which does not imply that the person who commits it is a person of lawless habits. We think, therefore, that the offence of a casual utterer is perhaps the least heinous of all the offences into which fraud enters.

We considered whether it would be advisable to make it an offence in a person to have in his possession at one time a certain number of counterfeit coins, without being able to explain satisfactorily how he came by them. It did not, after much discussion, appear to us advisable to recommend this or any similar provision. We entertain strong objections to the practice of making circumstances which are in truth only evidence of an offence part of the definition of an offence ; nor do we see any reason for departing in this case from our general rule.

Whether a person who is possessed of bad money knows the money to be bad, and whether, knowing it to be bad, he intends to put it in circulation, are questions to be decided by the tribunals according to the circumstances of the case—circumstances of which the

mere number of the pieces is only one, and may be one of the least important. A few bad rupees which should evidently be fresh from the stamp would be stronger evidence than a greater number of bad rupees which appeared to have been in circulation for years. A few bad rupees, all obviously coined with the same die, would be stronger evidence than a greater number obviously coined with different dies. A few bad rupees placed by themselves, and unmixed with good ones, would be far stronger evidence than a much larger number which might be detected in a large mass of treasure.

NOTE (J)

ON THE CHAPTER OF OFFENCES RELATING TO RELIGION AND CASTE

THE principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the British government in India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion, and that no man should be suffered to insult the religion of another.

The question whether insults offered to a religion ought to be visited with punishment does not appear to us at all to depend on the question whether that religion be true or false. The religion may be false, but the pain which such insults give to the professors of that religion is real. It is often, as the most superficial observation may convince us, as real a pain and as acute a pain as is caused by almost any offence against the person, against property, or against character.

Nor is there any compensating good whatsoever to be set off against this pain. Discussion, indeed, tends to elicit truth. But insults have no such tendency. They can be employed just as easily against the purest faith as against the most monstrous superstition. It is easier to argue against falsehood than against truth. But it is as easy to pull down or defile the temples of truth as those of falsehood. It is as easy to molest with ribaldry and clamor men assembled for purposes of pious and rational worship, as men engaged in the most absurd ceremonies. Such insults, when directed against erroneous opinions, seldom have any other effect than to fix those opinions deeper, and to give a character of peculiar ferocity to theological dissension. Instead of eliciting truth, they only inflame fanaticism.

All these considerations apply with peculiar force to India. There is, perhaps, no country in which the government has so much to apprehend from religious excitement among the people. The Christians are numerically a very small minority of the population, and in possession of all the highest posts in the government, in the tribunals, and in the army. Under their rule are placed millions of Mahometans, of differing sects, but all strongly attached to the fundamental articles of the Mahometan creed, and tens of millions of Hindoos, strongly attached to doctrines and rites which Christians and Mahometans join in reprobating. Such a state of things is pregnant with dangers which can only be averted by a firm adherence to the true principles of toleration. On those principles the British government has hitherto acted with eminent judgment, and with no less eminent success ; and on those principles we propose to frame this part of the penal code.

We have provided a punishment of great severity for the intentional destroying or defiling of places of worship, or of objects held sacred by any class of persons. No offence in the whole code is so likely to lead to tumult, to sanguinary outrage, and even to armed insurrection. The slaughter of a cow in a sacred place at Benares in 1809 caused violent tumult, attended with considerable loss of life. The pollution of a mosque at Bangalore was attended with consequences still more lamentable and alarming. We have therefore empowered the courts, in cases of this description, to pass a very severe sentence on the offender.

The provision which we have made for the purpose of protecting assemblies held for religious worship, and of guarding from intentional insult the rites of sepulture and the remains of the dead, do not appear to require any explanation or defence.

The intentional depriving a Hindoo of his caste by assault or by deception, is not at present an offence in any part of India, though it may be a ground for a civil action. It appears to us, however, that an injury so wanton, an injury which indicates so bad a feeling in the person who causes it, and which gives so much pain and excites so much resentment in the sufferer, is as proper a subject for penal legislation as most of the acts which are made punishable by this code. We have, therefore, made it an offence. The rendering the food of a Hindoo useless to him by causing it to be in what he considers as a polluted state is an injury of the same kind, though comparatively venial. We propose to make it an offence, but not to deal with it severely, unless it should be repeatedly committed by the same person.

In framing Clause 282, we had two objects in view. We wish to allow all fair latitude to religious discussion, and at the same time to prevent the professors of any religion from offering, under the pretext of such discussion, intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbors by words, gesture, or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by a person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause.

Clause 283 is intended to prevent such practices as those known among the natives by the names of Dhurna and Traga. Such acts are now punishable by law, and it is unnecessary to adduce any argument for the purpose of showing that they ought to be so.

NOTE (K)

ON THE CHAPTER OF ILLICIT ENTRANCE INTO AND ILLICIT RESIDENCE IN THE TERRITORIES OF THE EAST INDIA COMPANY

The Indian legislature is required by the Act of Parliament 3 and 4 William IV. cap 85, section 84, "as soon as conveniently may be, to make laws or regulations providing for the prevention or punishment of the illicit entrance into or residence in the said territories of persons not authorized to enter or reside therein."

We have, therefore, thought it our duty to insert in the penal code provisions for the purpose of carrying the intentions of Parliament into effect.

NOTE (L)

ON OFFENCES RELATING TO THE PRESS

The penal provisions contained in this chapter are taken from the Act of the Governor-General of India in Council, No. 11, of 1835.

Sufficient provision appears to us to have been made in other parts of the code, particularly by Clause 195, for the punishment of the offence mentioned in the last section of the Act to which we have referred.

NOTE (M)

ON OFFENCES AGAINST THE BODY

The first class of offences against the body consists of those offences which affect human life ; and highest in this first class stand those offences which fall under the definition of voluntary culpable homicide.

This important part of the law appears to us to require fuller explanation than almost any other.

The first point to which we wish to call the attention of his Lordship in Council is the expression " omits what he is legally bound to do " in the definition of voluntary culpable homicide. These words, or other words tantamount in effect, frequently recur in the code. We think this the most convenient place for explaining the reason which has led us so often to employ

them ; for if that reason shall appear to be sufficient in cases in which human life is concerned, it will, *à fortiori*, be sufficient in other cases.

Early in the progress of the code it became necessary for us to consider the following question : When acts are made punishable on the ground that those acts produce, or are intended to produce, or are known to be likely to produce, certain evil effects, to what extent ought omissions which produce, which are intended to produce, or which are known to be likely to produce, the same evil effects to be made punishable ?

Two things we take to be evident ; first, that some of these omissions ought to be punished in exactly the same manner in which acts are punished ; secondly, that all these omissions ought not to be punished. It will hardly be disputed that a jailer who voluntarily causes the death of a prisoner by omitting to supply that prisoner with food, or a nurse who voluntarily causes the death of an infant intrusted to her care by omitting to take it out of a tub of water into which it has fallen, ought to be treated as guilty of murder. On the other hand, it will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a beggar, even though there might be the clearest proof that the death of the beggar was the effect of this omission, and that the man who omitted to give the alms knew that the death of the beggar was likely to be the effect of the omission. It will hardly be maintained that a surgeon ought to be treated as a murderer for refusing to go from Calcutta to Meerut to perform an operation, although it should be absolutely certain that this surgeon was the only person in India who could perform it, and that if it were not performed

the person who required it would die. It is difficult to say whether a penal code which should put no omissions on the same footing with acts, or a penal code which should put all omissions on the same footing with acts, would produce consequences more absurd and revolting. There is no country in which either of these principles is adopted. Indeed, it is hard to conceive how, if either were adopted, society could be held together.

It is plain, therefore, that a middle course must be taken ; but it is not easy to determine what that middle course ought to be. The absurdity of the two extremes is obvious. But there are innumerable intermediate points ; and wherever the line of demarcation may be drawn, it will, we fear, include some cases which we might wish to exempt, and will exempt some which we might wish to include.

Mr. Livingston's code provides that a person shall be considered as guilty of homicide who omits to save life, which he could save " without personal danger or pecuniary loss." This rule appears to us to be open to serious objection. There may be extreme inconvenience without the smallest personal danger, or the smallest risk of pecuniary loss, as in the case which we lately put of a surgeon summoned from Calcutta to Meerut to perform an operation. He may be offered such a fee that he would be a gainer by going. He may have no ground to apprehend that he should run any greater personal risk by journeying to the Upper Provinces than by continuing to reside in Bengal. But he is about to proceed to Europe immediately, or he expects some members of his family by the next ship, and wishes to be at the presidency to receive them. He

therefore refuses to go. Surely, he ought not, for so refusing, to be treated as a murderer. It would be somewhat inconsistent to punish one man for not staying three months in India to save the life of another, and to leave wholly unpunished a man who, enjoying ample wealth, should refuse to disburse an anna to save the life of another. Again, it appears to us that it may be fit to punish a person as a murderer for causing death by omitting an act which cannot be performed without personal danger or pecuniary loss. A parent may be unable to procure food for an infant without money. Yet the parent, if he has the means, is bound to furnish the infant with food, and if, by omitting to do so, he voluntarily causes its death, he may with propriety be treated as a murderer. A nurse hired to attend a person suffering from an infectious disease cannot perform her duty without running some risk of infection. Yet if she deserts the sick person, and thus voluntarily causes his death, we should be disposed to treat her as a murderer.

We pronounce with confidence, therefore, that the line ought not to be drawn where Mr. Livingston has drawn it. But it is with great diffidence that we bring forward our own proposition. It is open to objections : cases may be put in which it will operate too severely, and cases in which it will operate too leniently; but we are unable to devise a better.

What we propose is this : that where acts are made punishable on the ground that they have caused, or have been intended to cause, or have been known to be likely to cause, a certain evil effect, omissions which have caused, which have been intended to cause, or which have been known to be likely to cause the same

effect, shall be punishable in the same manner, provided that such omissions were, on other grounds, illegal. An omission is illegal (see Clause 28) if it be an offence, if it be a breach of some direction of law, or if it be such a wrong as would be a good ground for a civil action.

We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if A was Z's jailer, directed by the law to furnish Z with food. It is murder if Z was the infant child of A, and had, therefore, a legal right to sustenance, which right a civil court would enforce against A. It is murder if Z was a bedridden invalid, and A a nurse hired to feed Z. It is murder if A was detaining Z in unlawful confinement, and had thus contracted (see Clause 338) a legal obligation to furnish Z, during the continuance of the confinement, with necessaries. It is not murder if Z is a beggar, who has no other claim on A than that of humanity.

A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. This is murder, if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder if A is a guide who had contracted to conduct Z. It is not murder if A is a person on whom Z has no other claim than that of humanity.

A savage dog fastens on Z. A omits to call off the dog, knowing that if the dog be not called off, it is likely that Z will be killed. Z is killed. This is murder in A, if the dog belonged to A, inasmuch as his omis-

sion to take proper order with the dog is illegal. (Clause 273.) But if A be a mere passer-by, it is not murder.

We are sensible that in some of the cases which we have put, our rule may appear too lenient ; but we do not think that it can be made more severe without disturbing the whole order of society. It is true that the man who, having abundance of wealth, suffers a fellow-creature to die of hunger at his feet is a bad man a worse man, probably, than many of those for whom we have provided very severe punishment. But we are unable to see where, if we make such a man legally punishable, we can draw the line. If the rich man who refuses to save a beggar's life at the cost of a little copper is a murderer, is the poor man just one degree above beggary also to be a murderer if he omits to invite the beggar to partake his hard-earned rice ? Again, if the rich man is a murderer for refusing to save the beggar's life at the cost of a little copper, is he also to be a murderer if he refuses to save the beggar's life at the cost of a thousand rupees ? Suppose A to be fully convinced that nothing can save Z's life unless Z leave Bengal and reside a year at the Cape ; is A, however wealthy he may be, to be punished as a murderer because he will not, at his own expense, send Z to the Cape ? Surely not. Yet it will be difficult to say on what principle we can punish A for not spending an anna to save Z's life, and leave him unpunished for not spending a thousand rupees to save Z's life. The distinction between a legal and an illegal omission is perfectly plain and intelligible; but the distinction between a large and a small sum of money is very far from being so, not to say that a sum which is small to one man is large to another.

The same argument holds good in the case of the ford. It is true that none but a very depraved man would suffer another to be drowned when he might prevent it by a word. But if we punish such a man, where are we to stop? How much exertion are we to require? Is a person to be a murderer if he does not go fifty yards through the sun of Bengal at noon in May in order to caution a traveller against a swollen river? Is he to be a murderer if he does not go a hundred yards?—if he does not go a mile?—if he does not go ten? What is the precise amount of trouble and inconvenience which he is to endure? The distinction between the guide who is bound to conduct the traveller as safely as he can, and a mere stranger, is a clear distinction. But the distinction between a stranger who will not give a halloo to save a man's life, and a stranger who will not run a mile to save a man's life, is very far from being equally clear.

It is, indeed, most highly desirable that men should not merely abstain from doing harm to their neighbors, but should render active services to their neighbors. In general, however, the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to teachers of morality and religion, the office of furnishing men with motives for doing positive good. It is evident that to attempt to punish men by law for not rendering to others all the service which it is their duty to render to others would be preposterous. We must grant impunity to the vast majority of those omissions which a benevolent morality would pronounce reprehensible, and must content ourselves with punishing such omissions only when they are distinguished from the rest by some circumstance

which marks them out as peculiarly fit objects of penal legislation. Now, no circumstance appears to us so well fitted to be the mark as the circumstance which we have selected. It will generally be found in the most atrocious cases of omission ; it will scarcely ever be found in a venial case of omission ; and it is more clear and certain than any other mark that has occurred to us. That there are objections to the line which we propose to draw, we have admitted. But there are objections to every line which can be drawn, and some line must be drawn.

The next point to which we wish to call the attention of his Lordship in Council is the unqualified use of the words " to cause death " in the definition of voluntary culpable homicide.

We long considered whether it would be advisable to except from this definition any description of acts or illegal omissions, on the ground that such acts or illegal omissions do not ordinarily cause death, or that they cause death very remotely. We have determined, however, to leave the clause in its present simple and comprehensive form.

There is, undoubtedly, a great difference between acts which cause death immediately, and acts which cause death remotely ; between acts which are almost certain to cause death, and acts which cause death only under very extraordinary circumstances. But that difference, we conceive, is a matter to be considered by the tribunals when estimating the effect of the evidence in a particular case, not by the legislature in framing the general law. It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act which has caused death very

remotely, has actually caused death in a particular case. It will require still stronger evidence to prove that such an act was contemplated by the person who did it as likely to cause death. But if it be proved by satisfactory evidence that death has been so caused, and has been caused voluntarily, we see no reason for exempting the person who caused it from the punishment of voluntary culpable homicide.

Mr. Livingston, we observe, excepts from the definition of homicide cases in which death is produced by the effect of words on the imagination or the passions. The reasoning of that distinguished jurist has by no means convinced us that the distinction which he makes is well founded. Indeed, there are few parts of his code which appear to us to have been less happily executed than this. His words are these : " The destruction must be by the act of another ; therefore self-destruction is excluded from the definition. It must be operated by some act ; therefore death, although produced by the operation of words on the imagination or the passions, is not homicide. But if words are used which are calculated to produce and do produce some act which is the immediate cause of death, it is homicide. A blind man or a stranger in the dark, directed by words only to a precipice, where he falls and is killed ; a direction verbally given to take a drug that it is known will prove fatal, and which has that effect, are instances of this modification of the rule."

This appears to us altogether incoherent. A verbally directs Z to swallow a poisonous drug ; Z swallows it, and dies ; and this, says Mr. Livingston, is homicide in A. It certainly ought to be so considered. But how, on Mr. Livingston's principles, it can be so con-

sidered we do not understand. "Homicide," he says, "must be operated by an act." Where then is the act in this case? Is it the speaking of A? Clearly not, for Mr. Livingston lays down the doctrine that speaking is not an act. Is it the swallowing by Z? Clearly not, for the destruction of life, according to Mr. Livingston, is not homicide unless it be by the act of another, and this swallowing is an act performed by Z himself.

The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if by speaking he has voluntarily caused Z's death, whether his words operated circuitously by inducing Z to swallow poison or directly by throwing Z into convulsions.

There will, indeed, be few homicides of this latter sort. It appears to us that a conviction, or even a trial, in such a case would be an event of extremely rare occurrence. There would probably not be one such trial in a century. It would be most difficult to prove to the conviction of any court that death had really been the effect of excitement produced by words. It would be still more difficult to prove that the person who spoke the words anticipated from them an effect which, except under very peculiar circumstances, and on very peculiar constitutions, no words could produce. Still, it seems to us that both these points might be made out by overwhelming evidence; and, supposing them to be so made out, we are unable to perceive any distinction between the case of him who voluntarily causes death in this manner, and the case of him who voluntarily causes death by means of a pistol or a sword. Suppose it to be proved to the entire conviction of a criminal court that Z, the deceased, was in a

very critical state of health ; that A, the heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life ; that A immediately broke into Z's sick-room, and told him a dreadful piece of intelligence, which was a pure invention ; that Z went into fits and died on the spot ; that A had afterwards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no judge could doubt that A had voluntarily caused the death of Z ; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine.

Again, Mr. Livingston excepts from the definition of homicide the case of a person who dies of a slight wound which, from neglect or from the application of improper remedies, has proved mortal. We see no reason for excepting such cases from the simple general rule which we propose. It will, indeed, be in general more difficult to prove that death has been caused by a scratch than by a stab which has reached the heart ; and it will, in a still greater degree, be more difficult to prove that a scratch was intended to case death ; yet both these points might be fully established. Suppose such a case as the following : It is proved that A inflicted a slight wound on Z, a child who stood between him and a large property. It is proved that the ignorant and superstitious servants about Z applied the most absurd remedies to the wound. It is proved that under this treatment the wound mortified and the child died. Letters from A to a confidant are produced. In those letters, A congratulates himself on

his skill ; remarks that he could not have inflicted a more severe wound without exposing himself to be punished as a murderer ; relates with exultation the mode of treatment followed by the people who had charge of Z, and boasts that he always foresaw that they would turn the slightest incision into a mortal wound. It appears to us that if such evidence were produced, A ought to be punished as a murderer.

Again, suppose that A makes a deliberate attempt to commit assassination. In the presence of numbers he aims a knife at the heart of Z. But the knife glances aside, and inflicts only a slight wound. This happened in the case of Jean Chatel, of Damien, of Guiscard, and of many other assassins of the most desperate character. In such cases there is no doubt whatever as to the intention. Suppose that the person who received the wound is under the necessity of exposing himself to a moist atmosphere immediately afterwards, and that, in consequence, he is attacked with tetanus and dies. Here again, however slight the wound may have been, we are unable to perceive any good reason for not punishing A as a murderer.

We will only add that this provision of the Code of Louisiana appears to us peculiarly ill-suited to a country in which, we have reason to fear, neglect and bad treatment are far more common than good medical treatment.

The general rule, therefore, which we propose is, that the question whether a person has by an act or illegal omission voluntarily caused death shall be left a question of evidence to be decided by the courts, according to the circumstances of every case.

We propose that all voluntary culpable homicide

shall be designated as murder, unless it fall under one of three heads. We are desirous to call the particular attention of his Lordship in Council to the law respecting the three mitigated forms of voluntary culpable homicide ; and first to the law of manslaughter.

We agree with the great mass of mankind, and with the majority of jurists, ancient and modern, in thinking that homicide committed in the sudden heat of passion, on great provocation, ought to be punished; but that in general it ought not to be punished so severely as murder. It ought to be punished in order to teach men to entertain a peculiar respect for human life ; it ought to be punished in order to give men a motive for accustoming themselves to govern their passions ; and in some few cases for which we have made provision, we conceive that it ought to be punished with the utmost rigor.

In general, however, we would not visit homicide committed in violent passion, which had been suddenly provoked, with the highest penalties of the law. We think that to treat a person guilty of such homicide as we should treat a murderer would be a highly inexpedient course—a course which would shock the universal feeling of mankind, and would engage the public sympathy on the side of the delinquent against the law.

His Lordship in Council will remark one important distinction between the law as we have framed it and some other systems. Neither the English law nor the French code extends any indulgence to homicide which is the effect of anger excited by words alone. Mr. Livingston goes still further. " No words whatever," says the code of Louisiana, " are an adequate cause, no gestures merely showing derision or contempt, no

assault or battery so slight as to show that the intent was not to inflict great bodily harm."

We greatly doubt whether any good reason can be assigned for this distinction. It is an indisputable fact that gross insults by word or gesture have as great a tendency to move many persons to violent passion as dangerous or painful bodily injuries. Nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of a peculiarly bad heart. It would be a fortunate thing for mankind if every person felt an outrage which left a stain upon his honor more acutely than an outrage which had fractured one of his limbs. If so, why should we treat an offence produced by the blamable excess of a feeling which all wise legislators desire to encourage, more severely than we treat the blamable excess of feelings certainly not more respectable ?

One outrage which wounds only the honor and the affections is admitted by Mr. Livingston to be an adequate provocation. "A discovery of the wife of the accused in the act of adultery with the person killed is an adequate cause." The law of France, the law of England, and the Mahometan law are also indulgent to homicide committed under such circumstances. We must own that we can see no reason for making a distinction between this provocation and many other provocations of the same kind. We cannot consent to lay it down as universal rule that in all cases this provocation shall be considered as an adequate provocation. Circumstances may easily be conceived which would satisfy a court that a husband had in such a case

acted from no feeling of wounded honor or affection, but from mere brutality of nature, or from disappointed cupidity. On the other hand, we conceive that there are many cases in which as much indulgence is due to the excited feelings of a father or a brother as to those of a husband. That a worthless, unfaithful, and tyrannical husband should be guilty only of manslaughter for killing the paramour of his wife, and that an affectionate and high-spirited brother should be guilty of murder for killing, in a paroxysm of rage, the seducer of his sister, appears to us inconsistent and unreasonable.

There is another class of provocations which Mr. Livingston does not allow to be adequate in law, but which have been, and while human nature remains unaltered, will be, adequate in fact to produce the most tremendous effects. Suppose a person to take indecent liberties with a modest female, in the presence of her father, her brother, her husband, or her lover. Such an assault might have no tendency to cause pain or danger ; yet history tells us what effects have followed from such assaults. Such an assault produced the Sicilian Vespers. Such an assault called forth the memorable blow of Wat Tyler. It is difficult to conceive any class of cases in which the intemperance of anger ought to be treated with greater lenity. So far, indeed, should we be from ranking a man who acted like Tyler with murderers, that we conceive that a judge would exercise a sound discretion in sentencing such a man to the lowest punishment fixed by the law for manslaughter.

We think it right to add that, though in our remarks on this part of the law we have used illustrations drawn from the history and manners of Europe, the arguments

which we have employed apply as strongly to the state of society in India as to the state of society in any part of the globe. There is, perhaps, no country in which more cruel suffering is inflicted and more deadly resentment called forth, by injuries which affect only the mental feelings.

A person who should offer a gross insult to the Mahometan religion in the presence of a zealous professor of that religion ; who should deprive some high-born Rajpoot of his caste ; who should rudely thrust his head into the covered palanquin of a woman of rank, would probably move those whom he insulted to more violent anger than if he had caused them some severe bodily hurt. That on these subjects our notions and usages differ from theirs is nothing to the purpose. We are legislating for them, and though we may wish that their opinions and feelings may undergo a considerable change, it is our duty, while their opinions and feelings remain unchanged, to pay as much respect to those opinions and feelings as if we partook of them. We are legislating for a country where many men, and those by no means the worst men, prefer death to the loss of caste ; where many women, and those by no means the worst women, would consider themselves as dishonored by exposure to the gaze of strangers : and to legislate for such a country, as if the loss of caste or the exposure of a female face were not provocations of the highest order, would, in our opinion, be unjust and unreasonable.

The second mitigated form of voluntary culpable homicide is that to which we have given the name of voluntary culpable homicide by consent. It appears to us that this description of homicide ought to be

punished, but that it ought not to be punished so severely as murder. We have elsewhere given our reasons for thinking that this description of homicide ought to be punished.[1]

Our reasons for not punishing it so severely as murder are these: In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honor, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain; the friend who supplies laudanum to a person suffering the torment of a lingering disease; the freedman who in ancient times held out the sword that his master might fall on it; the high-born native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public, and ought not to be treated by the law, as assassins.

Again, this crime is by no means productive of so much evil to the community as murder. One evil ingredient of the utmost importance is altogether wanting to the offence of voluntary culpable homicide by consent. It does not produce general insecurity. It does not spread terror through society. When we punish murder with such signal severity, we have two ends in view. One end is, that people may not be murdered. Another end is, that people may not live in constant

[1] See Note (B).

dread of being murdered. The second end is, perhaps, the more important of the two. For if assassination were left unpunished, the number of persons assassinated would probably bear a small proportion to the whole population ; but the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent. Every man who has not given his consent to be put to death is perfectly certain that this latter offence cannot at present be committed on him, and that it never will be committed unless he shall first be convinced that it is his interest to consent to it. We know that two or three midnight assassinations are sufficient to keep a city of a million of inhabitants in a state of consternation during several weeks, and to cause every private family to lay in arms and watchmen's rattles. No number of suicides, or of homicides committed with the unextorted consent of the person killed, could possibly produce such alarm among the survivors.

The distinction between murder and voluntary culpable homicide by consent has never, as far as we are aware, been recognized by any code in the distinct manner in which we propose to recognize it ; but it may be traced in the laws of many countries, and often, when neglected by those who have framed the laws, it has had a great effect on the decisions of the tribunals, and particularly on the decisions of tribunals popularly composed. It may be proper to observe that the burning of a Hindoo widow by her own consent, though it is now, as it ought to be, an offence by the regulations of every Presidency, is in no Presidency punished as murder.

The third mitigated form of voluntary culpable homicide is that which we have designated as voluntary culpable homicide in defence.

We have been forced to leave the law on the subject of private defence, as we have elsewhere said, in an unsatisfactory state ; and, though we hope and believe that it may be greatly improved, we fear that it must always continue to be one of the least precise parts of every system of jurisprudence. That portion of the law of homicide which we are now considering is closely connected with the law of private defence, and must necessarily partake of the imperfections of the law of private defence. But wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and what we have designated as voluntary culpable homicide in defence.

The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide, indeed ; but it authorizes acts which lie very near to such homicide ; and this circumstance, we think, greatly mitigates the guilt of such homicide.

That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished, would be most dangerous. The law punishes, and ought to punish, such killing. But we cannot think that the law ought to punish such killing as murder. For the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the

purpose of repelling the outrage—to give the assailant a cut with a sharp knife across the fingers which may render his right hand useless to him for life, or to hurl him down-stairs with such force as to break his leg; and it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the code if he kills the same assailant; that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment, seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death.

It is to be considered, also, that the line between those aggressions which it is lawful to repel by killing, and those which it is not lawful so to repel, is in our code, and must be in every code, to a great extent an arbitrary line, and that many individual cases will fall on one side of that line which, if we had framed the law with a view to those cases alone, we should place on the other. Thus we allow a man to kill if he has no other means of preventing an incendiary from burning a house; and we do not allow him to kill for the purpose of preventing the commission of a simple theft. But a house may be a wretched heap of mats and thatch, propped by a few bamboos, and not worth altogether twenty rupees. A simple theft may deprive a man of a pocket-book which contains bills to a great

amount, the savings of a long and laborious life, the sole dependence of a large family. That in these cases the man who kills the incendiary should be pronounced guiltless of any offence, and that the man who kills the thief should be sentenced to the gallows, or, if he is treated with the utmost lenity which the courts can show, to perpetual transportation or imprisonment, would be generally condemned as a shocking injustice. We are, therefore, clearly of opinion that the offence which we have designated as voluntary culpable homicide in defence ought to be distinguished from murder in such a manner that the courts may have it in their power to inflict a slight or a merely nominal punishment on acts which, though not within the letter of the law which authorizes killing in self-defence, are yet within the reason of that law.

We have hitherto been considering the law of voluntary culpable homicide. But homicide may be culpable, yet not voluntary. There will probably be little difference of opinion as to the expediency of providing a punishment for the rash and negligent causing of death. But it may be thought that we have dealt too leniently by the offender who, while committing a crime, causes death which he did not intend to cause or know himself to be likely to cause.

The law, as we have framed it, differs widely from the English law. "If," says Sir William Blackstone, "one intends to do another felony, and undesignedly kills a man, this is murder"; and he gives the following illustration of the rule: "If one gives a woman with child a medicine to produce abortion, and it operates so violently as to kill the woman, this is murder in the person who gave it."

Under the provisions of our code, this case would be very differently dealt with according to circumstances. If A kills Z by administering abortives to her, with the knowledge that those abortives are likely to cause her death, he is guilty of voluntary culpable homicide, which will be voluntary culpable homicide by consent if Z agreed to run the risk, and murder if Z did not so agree. If A causes miscarriage to Z, not intending to cause Z's death, nor thinking it likely that he shall cause Z's death, but so rashly or negligently as to cause her death, A is guilty of culpable homicide not voluntary, and will be liable to the punishment provided for the causing of miscarriage, increased by imprisonment for a term not exceeding two years. Lastly, if A took such precautions that there was no reasonable probability that Z's death would be caused, and if the medicine were rendered deadly by some accident, which no human sagacity could have foreseen, or by some peculiarity in Z's constitution such as there was no ground whatever to expect, A will be liable to no punishment whatever on account of her death, but will of course be liable to the punishment provided for causing miscarriage.

It may be proper for us to offer some arguments in defence of this part of the code.

It will be admitted that when an act is in itself innocent, to punish the person who does it because bad consequences, which no human wisdom could have foreseen, have followed from it, would be in the highest degree barbarous and absurd.

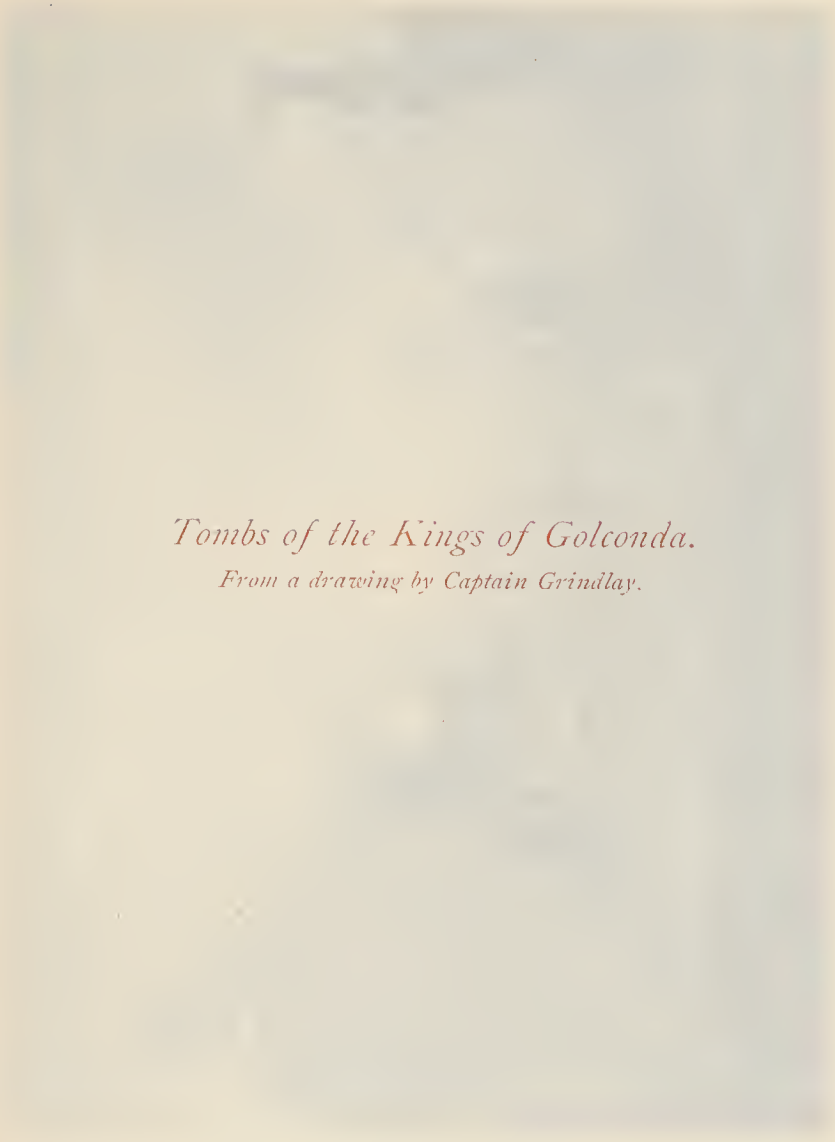
A pilot is navigating the Hoogly with the utmost care and skill : he directs the vessel against a sand-bank which has been recently formed, and of which

the existence was altogether unknown till this disaster. Several of his passengers are consequently drowned. To hang the pilot as a murderer on account of this misfortune would be universally allowed to be an act of atrocious injustice. But if the voyage of the pilot be itself a high offence, ought that circumstance alone to turn his misfortune into a murder? Suppose that he is engaged in conveying an offender beyond the reach of justice; that he has kidnapped some natives, and is carrying them to a ship which is to convey them to some foreign slave-colony; that he is violating the laws of quarantine at a time when it is of the highest importance that those laws should be strictly observed; that he is carrying supplies, deserters, and intelligence to the enemies of the state. The offence of such a pilot ought, undoubtedly, to be severely punished. But to pronounce him guilty of one offence because a misfortune befel him while he was committing another offence —to pronounce him the murderer of people whose lives he never meant to endanger, whom he was doing his best to carry safe to their destination, and whose death has been purely accidental—is surely to confound all the boundaries of crime.

Again, A heaps fuel on a fire, not in an imprudent manner, but in such a manner that the chance of harm is not worth considering. Unhappily the flame bursts out more violently than there was reason to expect. At the same moment a sudden puff of wind blows Z's light dress towards the hearth. The dress catches fire, and Z is burned to death. To punish A as a murderer on account of such an unhappy event, would be senseless cruelty. But suppose that the fuel which caused the flame to burst forth was a will, which A was fraudu-

lently destroying : ought this circumstance to make A the murderer of Z ? We think not. For the fraudulent destroying of wills, we have provided, in other parts of the code, punishments which we think sufficient. If not sufficient, they ought to be made so. But we cannot admit that Z's death has, in the smallest degree, aggravated A's offence, or ought to be considered in apportioning A's punishment.

To punish as a murderer every man who, while committing a heinous offence, causes death by pure misadventure, is a course which evidently adds nothing to the security of human life. No man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the death of a fellow-creature. The utmost that he can do is to abstain from everything which is at all likely to cause death. No fear of punishment can make him do more than this ; and, therefore, to punish a man who has done this can add nothing to the security of human life. The only good effect which such punishment can produce will be to deter people from committing any of those offences which turn into murders what are in themselves mere accidents. It is, in fact, an addition to the punishment of those offences, and it is an addition made in the very worst way. For example, hundreds of persons in some great cities are in the habit of picking pockets. They know that they are guilty of a great offence ; but it has never occurred to one of them, nor would it occur to any rational man, that they are guilty of an offence which endangers life. Unhappily one of these hundreds attempts to take the purse of a gentleman who has a loaded pistol in his pocket. The thief touches the trigger, the pistol goes off, the gentleman is shot



Tombs of the Kings of Golconda.

From a drawing by Captain Grindlay.

dead. To treat the case of this pickpocket differently from that of the numerous pickpockets who steal under exactly the same circumstances, with exactly the same intentions, with no less risk of causing death, with no greater care to avoid causing death ; to send them to the house of correction as thieves, and him to the gallows as a murderer, appears to us an unreasonable course. If the punishment for stealing from the person be too light, let it be increased, and let the increase fall alike on all the offenders. Surely the worst mode of increasing the punishment of an offence is to provide that, besides the ordinary punishment, every offender shall run an exceedingly small risk of being hanged. The more nearly the amount of punishment can be reduced to a certainty, the better ; but if chance is to be admitted, there are better ways of admitting it. It would be a less capricious, and therefore a more salutary course, to provide that every fiftieth or every hundredth thief selected by lot should be hanged, than to provide that every thief should be hanged who, while engaged in stealing, should meet with an unforeseen misfortune, such as might have befallen the most virtuous man while performing the most virtuous action.

We trust that his Lordship in Council will think that we have judged correctly in proposing that when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punishment of his offence, without any addition on account of such accidental death.

When a person engaged in the commission of an offense causes death by rashness or negligence, but without either intending to cause death, or thinking it likely that he shall cause death, we propose that he

shall be liable to the punishment of the offence which he was engaged in committing, superadded to the ordinary punishment of involuntary culpable homicide. The arguments and illustrations which we have employed for the purpose of showing that the involuntary causing of death without either rashness or negligence, ought, under no circumstances to be punished at all, will, with some modifications, which will readily suggest themselves, serve to show that the involuntary causing of death by rashness or negligence, though always punishable, ought under no circumstances to be punished as murder.

It gives us great pleasure to observe that Mr. Livingston's provisions on this subject, though in details they differ widely from ours, are framed on the principles which we have here defended.

We wish next to call the attention of his Lordship in Council to Clauses 308 and 309.

These clauses appear to us absolutely necessary to the completeness of the code. We have provided, under the head of bodily hurt, for cases in which hurt is inflicted in an attempt to murder ; under the head of assault, for assaults committed in attempting to murder ; under the head of criminal trespass for some criminal trespasses committed in order to murder. But there will still remain many atrocious and deliberate attempts to murder which are not trespasses, which are not assaults, and which cause no hurt. A, for example, digs a pit in his garden, and conceals the mouth of it, intending that Z may fall in and perish there. Here A has committed no trespass, for the ground is his own ; and no assault, for he has applied no force to Z. He may not have caused bodily hurt, for Z may have re-

ceived a timely caution, or may not have gone near the pit. But A's crime is evidently one which ought to be punished as severely as if he had laid hands on Z with the intention of cutting his throat.

Again, A sets poisoned food before Z. Here A may have committed no trespass, for the food may be his own ; and if so, he violates no right of property by mixing arsenic with it. He commits no assault, for he means the taking of the food to be Z's voluntary act. If Z does not swallow enough of the poisoned food to disorder him, A causes no bodily hurt. Yet it is plain that A has been guilty of a crime of a most atrocious description. Similar attempts may be made to commit voluntary culpable homicide in any of the three mitigated forms. A, for example, is excited to violent passion by Z, and fires a pistol intending to kill Z. If the shot proves fatal, A will be guilty of manslaughter ; and he surely ought not to be exempted from all punishment if the ball only grazes the intended victim.

It is to meet cases of this description that Clauses 308 and 309 are intended.

With respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this or any other law on that subject may, in this country, be abused to the vilest purposes. The charge of abortion is one which, even where it is not substantiated, often leaves a stain on the honor of families. The power of bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care be taken, produce few convictions, but much misery and terror to respectable families, and a large harvest of profit to

the vilest pests of society. We trust that it may be in our power in the code of procedure to lay down rules which may prevent such an abuse. Should we not be able to do so, we are inclined to think that it would be our duty to advise his Lordship in Council rather to suffer abortion, where the mother is a party to the offence, to remain wholly unpunished, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty.

Every one of those offences against the human body which remain to be considered falls under some one or more of the following heads : Hurt, Restraint, Assault, Kidnapping, Rape, Unnatural crimes.

Many of the offences which fall under the head of hurt will also fall under the head of assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious potion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking ; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt ; but they cannot, without extreme violence to language, be said to have committed assaults.

We propose to designate all pain, disease, and infirmity by the name of hurt.

We have found it very difficult to draw a line between those bodily hurts which are serious and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible ; but it is far

better that such a line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, should be classed together.

We have, therefore, designated certain kinds of hurt as *grievous*.

We have given this name to emasculation—to the loss of the sight of either eye—to the loss of the hearing of either ear—to the loss of any member or joint—to the permanent loss of the perfect use of any member or joint—to the permanent disfiguration of the head or face—to the fracture and to the dislocation of bones. Thus far we proceed on sure ground. But a more difficult task remains. Some hurts which are not, like those kinds of hurt which we have just mentioned, distinguished by a broad and obvious line from slight hurts, may nevertheless be most serious. A wound, for example, which neither emasculates the sufferer, nor blinds him, nor destroys his hearing, nor deprives him of a member or a joint, nor permanently deprives him of the use of a member or a joint, nor disfigures his countenance, nor breaks his bones, nor dislocates them, may yet cause intense pain, prolonged disease, lasting injury to the constitution. It is evidently desirable that the law should make a distinction between such a wound, and a scratch which is healed with a little sticking-plaster. A beating, again, which does not maim the sufferer or break his bones, may be so cruel as to bring him to the point of death. Such a beating, it is clear, ought not to be confounded with a bruise which requires only to be bathed with vinegar, and of which the traces disappear in a day.

After long consideration, we have determined to give the name of grievous bodily hurt to all hurt which causes the sufferer to be in pain, diseased, or unable to pursue his ordinary avocations, during the space of twenty days.

This provision was suggested to us by article 309 of the French Penal Code. That article runs thus: "Sera puni de la peine de la réclusion, tout individu qui aura fait des blessures ou porté des coups, s'il est resulté de ces actes de violence une maladie ou incapacité de travail personnel pendant plus de vingt jours." *Réclusion*, it is to be observed, signifies imprisonment and hard labor for a term of not less than five nor more than ten years.

This law appears, from the *procès verbal* of Napoleon's council of state, to have been adopted without calling forth a single[1] observation; but it has since been severely criticised by French jurists, and has been mitigated by the French legislature. Indeed, it ought to have been completely recast, for it is undoubtedly one of the most exceptionable laws in the code.

A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly serious. A push which to a man in health is a trifle may, if it happens to be directed against a diseased part of an infirm person, occasion consequences which the offender never contemplated as possible. A blow designed to inflict only the pain of a moment may cause the person struck to lose his footing, to fall from a considerable height, and to break a limb. In such cases, to punish the assailant with five years strict imprisonment would be in the highest de-

[1] Locré, *Legislation de France*. Vol. 30, page 362.

gree unjust and cruel. It is said, and we can easily believe it,[1] that, in such cases, the French juries have frequently refused, in spite of the clearest evidence, to pronounce a decision which would have subjected the accused to a punishment so obviously disproportioned to his offence.

We have attempted to preserve and to extend what is good in this article of the French code, and to avoid the evils which we have noticed. It appears to us that the length of time during which a sufferer is in pain, diseased, or incapacitated from pursuing his ordinary avocations, though a defective criterion of the severity of a hurt, is still the best criterion that has ever been devised. It is a criterion which may, we think, with propriety be employed not merely in cases where violence has been used, but in cases where hurt has been caused without any assault, as by the administration of drugs, the setting of traps, the digging of pit-falls, the placing of ropes across a road. But though we have borrowed from the French code this test of the severity of bodily injuries, we have framed our penal provisions on a principle quite different from that by which the authors of the French code appear to have been guided. In apportioning the punishment, we take into consideration both the extent of the hurt and the intention of the offender.

What we propose is, that the voluntary infliction of simple bodily hurt shall be punished with imprisonment of either description, which may extend to one year, or fine, or both; the voluntary infliction of grievous hurt with imprisonment of either description for a

[1] Paillet, *Manuel de Droit Français*. Note on Clause 309 of the Penal Code.

term which may extend to ten years and must not be less than six months, to which fine may be added.

These are the ordinary punishments; but there are certain aggravating and mitigating circumstances which make a considerable difference.

Where bodily hurt is voluntarily inflicted in an attempt to murder the person hurt, we propose to punish the offender with transportation for life, or with imprisonment for a term which may extend to life, and cannot be less than seven years. It does not appear to us that, where the murderous intention is made out, the severity of the hurt inflicted is a circumstance which ought to be considered in apportioning the punishment. It is undoubtedly a circumstance which will be important as evidence. A court will generally be more easily satisfied of the murderous intention of an assailant who has fractured a man's skull, than of one who has only caused a slight contusion. But the proof might be complete. To take examples which are universally known: Harley was laid up more than twenty days by the wound which he received from Guiscard; the scratch which Damien gave to Louis the Fifteenth was so slight that it was followed by no feverish symptoms. Yet it will be allowed that it would be absurd to make a distinction between the two assassins on this ground.

We propose that when bodily hurt is inflicted by way of torture, the punishment shall be very severe. In England, happily, such a provision would be unnecessary. But the execrable cruelties which are committed by robbers in this country for the purpose of extorting property, or information relating to property, render it absolutely necessary here. We propose that in such

cases, if the hurt inflicted be what we have designated as *grievous*, the offender shall be punished with transportation for life, or with imprisonment for a term which may extend to life, and which shall not be less than seven years. Where the hurt is not grievous, we propose that the imprisonment shall be for a term of not more than fourteen years, nor less than one year.

Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting injury, as laceration with a knife, or branding with a hot iron. But it will scarcely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a far worse and more dangerous member of society than he who has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous, ought yet, on account of the mode in which they are inflicted, to be punished more severely than many grievous hurts. We propose, therefore, that where bodily hurt is voluntarily caused by means of any sharp instrument, of fire, of any heated substance, of any corrosive substance, of any explosive substance, of any poison internal or external, or of any animal, the maximum of imprisonment may be increased, in cases of grievous bodily hurt, to fourteen years, in other cases to three years.

In cases where bodily hurt is voluntarily caused on grave and sudden provocation, we propose to mitigate the punishment. This mitigation is common to cases of hurt and of grievous hurt. But the voluntary causing of grievous hurt on great and sudden provocation

will still be punishable more severely than the voluntary causing of hurt not grievous on grave and sudden provocation. The provisions which we propose on this subject are framed on the same principles on which we have framed the law of manslaughter, and may be defended by the same arguments by which the law of manslaughter is defended.

Hitherto we have been considering cases in which hurt has been caused voluntarily. But hurt may be caused involuntarily, yet culpably. There may have been no design to cause hurt, no expectation that hurt would be caused. Yet there may have been a want of due care not to cause hurt. For these cases of the involuntary yet culpable infliction of bodily hurt, we have provided rules which bear a close analogy to those which we have provided for cases of involuntary culpable homicide.

The provision contained in Clause 329 bears, it will be seen, a close analogy to those contained in Clauses 308 and 309. We have provided, under the head of assault, for cases in which an assault is committed in an attempt to cause grievous bodily hurt. But there may be most malignant and atrocious attempts to cause grievous bodily hurt without any assault. For example, Z is directed to use a lotion for his eyes. A substitutes for that lotion a corrosive substance, intending that it may destroy Z's eyesight. Again ; A makes up a letter addressed to Z, and sends it to the post-office, having placed a strongly explosive substance under the seal, intending that the explosion may seriously injure Z. These are not assaults ; yet they are evidently acts which deserve severe punishment, and that punishment is provided by Clause 329.

By wrongful restraint we mean the keeping a man out of a place where he wishes to be, and has a right to be. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go.

The offence of wrongful restraint, when it does not amount to wrongful confinement, and when it is not accompanied with violence, or with the causing of bodily hurt, is seldom a serious offence, and we propose, therefore, to visit it with a light punishment.

The offence of wrongful confinement may be also a slight offence ; but, when attended by aggravating circumstances, it may be one of the most serious that can be committed.

One aggravating circumstance is the duration of the confinement. Confinement for a quarter of an hour may sometimes be a mere frolic, which would deserve only a nominal punishment ; which, indeed, might be so harmless as not to amount to an offence. (See Clause 73.) But wrongful confinement continued during many days will always be a most serious offence. We have attempted to frame the law on this subject in such a manner as to give the offender a strong motive for abridging the detention of his prisoner. Another aggravating circumstance is the circumstance that the offender persists in wrongfully confining a person, notwithstanding an order issued by a competent authority for the liberation or production of that person. The mode in which these orders are to be issued will be set forth in the code of procedure. A third aggravating circumstance is the circumstance that the offender uses criminal confinement for purposes of extortion. For

all these aggravated forms of wrongful confinement we have provided severe punishments.

We have also provided a separate punishment for a person who, while detaining another in wrongful confinement, omits to supply his prisoner with everything necessary to health, ease, and comfort. The effect of this provision is, that a person who wrongfully confines another will be answerable for any bodily hurt which he may cause by wrongfully omitting so to supply his prisoner.

We have found great difficulty in giving a definition of assault, and are by no means satisfied with that which we now offer. As, however, it at present appears to us to include all that we mean to include, and to exclude all that we mean to exclude, we have adopted it in spite of the objections which we feel to its harsh and quaint phraseology. We have adopted it with the less scruple, because we trust that the illustrations will render every part of it intelligible to an attentive reader.

A large proportion of the acts which we have designated as assaults will be offences falling under the heads of hurt and restraint. Thus, a stab with a knife is an offence falling under the head of hurt, and it is also an assault. The seizing a man by the collar, and thus preventing him from proceeding on his way, is unlawful restraint, and is also an assault. But there will be many assaults which it is absolutely necessary to punish, yet which cause neither bodily hurt nor unlawful restraint. A man who impertinently puts his arm round a lady's waist, who aims a severe stroke at a person with a horsewhip, who maliciously throws a stone at a person, squirts dirty water over a person, or

sets a dog at a person, may cause no hurt and no restraint, yet it is evident that such acts ought to be prevented.

The ordinary punishment which we propose for assault is slight. But we propose to punish assaults which are committed in attempting murder with transportation for life, or with imprisonment for a term which may extend to life, and which cannot be less than seven years. We have also provided severe punishments for assault, when it is committed in an attempt to commit any grave offence against the person, when it is committed with the intention of dishonoring the sufferer, or when it is an outrage offered to female modesty.

The offence of kidnapping is sometimes committed by means of assault, and is sometimes attended with restraint. But this will not always be the case. A child, for example, who is decoyed from its guardians, who soon forgets its home, and who consents to remain with the kidnapper, cannot be said to have been assaulted or restrained. A laborer who has been induced to embark on board of a ship by false assurances that he shall be taken to a country where he shall have good wages, but whom the captain of the ship intends to sell for a slave, has not, as yet, been either assaulted or restrained.

The crime of kidnapping consists, according to our definition of it, in conveying a person without his consent, or the consent of some person legally authorized to consent on his behalf, or with such consent obtained by deception, out of the protection of the law, or of those whom the law has appointed his guardians.

This offence may be committed on a child by remov-

ing that child out of the keeping of its lawful guardian or guardians. On a grown man it can only be committed by conveying him beyond the limits of the Company's territories, or by receiving him on board of a ship for that purpose.

The carrying of a grown-up person by force from one place within the Company's territories to another, and the enslaving him within the Company's territories, are offences sufficiently provided for under the heads of restraint and confinement.

The enticing a grown-up person by false promises to go from one place in the Company's territories to another place within those territories, may be a subject for a civil action, and, under certain circumstances, for a criminal prosecution ; but it does not appear to us to come properly under the head of kidnapping.

We propose to make the punishment of kidnapping peculiarly severe when it is committed with murderous intentions, as in the case of those subjects of the Company who were lately carried into the Jynteah country for purposes of human sacrifice.

We also propose to enhance the punishment of kidnapping in cases in which it is committed with the intention of inflicting grievous bodily harm on the person kidnapped, or of reducing that person to slavery, and when it is committed for purposes of rape or of unnatural lust.

We have placed under this head a provision for punishing persons who export laborers by sea from the Company's territories, in contravention of the Act recently passed by government on that subject.

The provisions which we propose on the subject of rape do not appear to require any remark.

Clauses 361 and 362 relate to an odious class of offences respecting which it is desirable that as little as possible should be said. We leave, without comment, to the judgment of his Lordship in Council the two clauses which we have provided for these offences. We are unwilling to insert, either in the text or in the notes, anything which could give rise to public discussion on this revolting subject; as we are decidedly of opinion that the injury which would be done to the morals of the community by such discussion would far more than compensate for any benefits which might be derived from legislative measures framed with the greatest precision.

NOTE (N)

ON THE CHAPTER OF OFFENCES AGAINST PROPERTY

There is such a mutual relation between the different parts of the law that those parts must all attain perfection together. That portion, be what it may, which is selected to be first put into the form of a code, with whatever clearness and precision it may be expressed and arranged, must necessarily partake, to a considerable extent, of the uncertainty and obscurity in which other portions are still left.

This observation applies with peculiar force to that important portion of the penal code which we now propose to consider. The offences defined in this chapter are made punishable on the ground that they are violations of the right of property; but the right of property is itself the creature of the law. It is evident, therefore, that if the substantive civil law touch-

ing this right be imperfect or obscure, the penal law, which is auxiliary to the substantive law, and of which the object is to add a sanction to that substantive law, must partake of the imperfection or obscurity. It is impossible for us to be certain that we have made proper penal provisions for violations of civil rights till we have a complete knowledge of all civil rights ; and this we cannot have while the law respecting those rights is either obscure or unsettled. As the present state of the civil law causes perplexity to the legislator in framing the penal code, so it will occasionally cause perplexity to the judges in administering that code. If it be matter of doubt what things are the subjects of a certain right, in whom that right resides, and to what that right extends, it must also be matter of doubt whether that right has or has not been violated.

For example, A, without Z's permission, shoots snipes on Z's ground, and carries them away : here, if the law of civil rights grants the property in such birds to any person who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other hand, the law of civil right declares such birds the property of the person on whose lands they are, A has invaded Z's right of property. If it be matter of doubt what the state of the civil law on the subject actually is, it must also be matter of doubt whether A has wronged Z or not.

By the English law,[1] pigeons, while they frequent a dove-cote, are the property of the owner of the dove-cote. By the Roman law[2] they were not so. By the

[1] Blackstone, Book II., Chap. 25.

[2] Columbarum fera natura est, nec ad rem pertinet, quod ex consuetudine evolare et revolare solent.—*Inst.*, lib. ii., tit. i.

French law [1] they are his property at one time of the year, and not his property at another. Here it is evident that the taking of such a pigeon, which would in England be a violation of the right of property, would be none in a country governed by the Roman law, and that, in France, it would depend on the time of the year whether it were so or not.

A lends a horse to B. B sells the horse to Z, who buys it, believing in good faith that B has a right to sell it. A sees the horse feeding. He mounts it and rides away with it. Here, if the law of civil rights provides that a thing sold by one who has no right to sell it shall nevertheless be the property of a *bona fide* purchaser, A has invaded Z's right of property. If, on the other hand, A's right is not affected by what has passed between B and Z, A does not commit an infraction of Z's right of property. If it be doubtful whether the right to the horse be in A or in Z, it must also be doubtful whether A has or has not committed an infraction of Z's right.

A path running across a field which belongs to Z has, during three years, been used as a public way. A, in spite of a prohibition from Z, uses it as such. Here, if, by the civil law, a usage of three years is sufficient to create a right of way, A has committed no infraction of Z's right. But if a prescription of more than three years, or an express grant, be necessary to create a right of way, A has committed an infraction of Z's right of property.

A discovers a mine on land occupied by him. Here, if the civil law assigns all minerals to the occupier of the land, A violates no right of property by appropri-

[1] Paillet, *Manuel de Droit Français.*

ating the minerals. But if the civil law assigns all minerals to the government, A violates the right of property by such appropriation.

The sea recedes, and leaves dry land in the immediate neighborhood of Z's property. Z cultivates the land. A turns cattle on the land, and destroys Z's crops. Here, if the civil law assigns alluvial additions to the occupier of the nearest land, A is a wrong-doer. If it declares alluvial additions common, A is not a wrong-doer. If it assigns alluvial additions to the government, both A and Z are wrong-doers. If it be uncertain to whom the law assigns alluvial additions, it must be also uncertain who is the wrong-doer, and whether there be any wrong-doer.

The substantive civil law, in the instances which we have given, is different in different countries, and in the same country at different times. As the substantive civil law varies, the penal law, which is added as a guard to the substantive civil law, must also vary. And while many important questions of substantive civil right are undetermined, the courts must occasionally feel doubtful whether the provisions of the penal code do or do not apply to a particular case.

It would evidently be impossible for us to determine in the penal code all the momentous questions of civil right which, in the unsettled state of Indian jurisprudence, will admit of dispute. We have, indeed, ventured to take for granted in our illustrations many things which properly belong to the domain of the civil law, because, without doing so, it would have been impossible for us to explain our meaning ; but we have, to the best of our judgment, avoided questions respecting which, even in the present state of Indian juris-

prudence, much doubt could exist. And in the text of the law we have, as closely as was possible, confined ourselves to what is in strictness the duty of persons engaged in framing a penal code. We have provided punishments for the infraction of rights, without determining in whom those rights vest, or to what those rights extend. We are inclined to hope that, even if the penal code should come into operation before the code of civil rights has been framed, the number of cases in which the want of a code of civil rights would occasion perplexity to the criminal tribunals will bear but a very small proportion to those in which no such perplexity will exist.

All the violations of the rights of property which we propose to make punishable by this chapter fall under one or more of the following heads:

1. Theft.
2. Extortion.
3. Robbery.
4. The criminal misappropriation of property not in possession.
5. Criminal breach of trust.
6. The receiving of stolen property.
7. Cheating.
8. Fraudulent bankruptcy.
9. Mischief.
10. Criminal trespass.

All these offences resemble each other in this, that they cause, or have some tendency, directly or indirectly, to cause some party not to have such a dominion over property as that party is entitled by law to have.

The first great line which divides these offences may

be easily traced. Some of them merely prevent or disturb the enjoyment of property by one who has a right to it. Others transfer property to one who has no right to it. Some merely cause injury to the sufferer. Others, by means of wrongful loss to the sufferer, cause wrongful gain to some other party. The latter class of offences are designated in this code as fraudulent. (See Clause 16.)

Every offence against property may be fraudulently committed; but theft, extortion, robbery, the criminal misappropriation of property not in possession, criminal breach of trust, the receiving of stolen property, fraudulent bankruptcy and cheating, must be in all cases fraudulently committed. Fraud enters into the definition of every one of these offences; but fraud does not enter into the definition of mischief or of criminal trespass.

Theft, the criminal misappropriation of property not in possession, and criminal breach of trust, are, in the great majority of cases, easily distinguishable. But the distinction becomes fainter and fainter as we approach the line of demarcation, and at length the offences fade imperceptibly into each other. This indistinctness may be greatly increased by unskilful legislation: but it has its origin in the nature of things, and in the imperfection of language, and must still remain in spite of all that legislation can effect.

We believe it to be impossible to mark with precision by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for example, that a gentle-

man's watch lying on a table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing-table or on his dressing-table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner, his silver forks, while in the hands of his guests, are still in his possession ; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawnbroker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is or that it is not in a person's possession.

This difficulty, sufficiently great in itself, would, we conceive, be increased by laws which should pronounce that in a set of cases arbitrarily selected from the mass, property is in the possession of some party in whose possession, according to the understanding of all mankind, it is not. The rule of English law respecting what is called breaking bulk is an instance of what we mean. A person who has intrusted a hamper of wine to another to carry to a great distance is not in possession of that hamper of wine. But if the person in trust opens the hamper and takes out a bottle, the possession, according to the English law-books, forthwith flies back to the distant owner. Mr. Livingston has laid down a rule of a similar kind, the effect of which, if we understand it rightly, is to annul the whole law of theft as he has framed it, and, indeed, to render it impossible that theft can be committed in Louisiana. Theft is defined by him to be " the fraudulently taking of corporal per-

sonal property having some assignable value, and belonging to another, from his possession and without his assent." But in a subsequent clause he says that "neither the ownership nor the legal possession of property is changed by theft alone, without the circumstances required in such case by the civil code, in order to produce a change of property; therefore, stolen goods, if fraudulently taken from the thief, are stolen from the original proprietor." But if stolen by the second thief from the original proprietor, they must, according to Mr. Livingston's definition of theft, be taken by the second thief out of the possession of the original proprietor; therefore, the first thief has left them in the possession of the original proprietor; that is to say, the first thief has not committed theft.

It will not be imagined that we refer to this inconsistency in the code of Louisiana for the purpose of throwing any censure on the distinguished author of that code. To do so would be unjust, and in us especially most ungrateful, and also most imprudent; for we are by no means confident that inconsistencies quite as remarkable will not be detected in the code which we now submit to government. We note this error of Mr. Livingston for the purpose of showing how dangerous it is for a legislator to attempt to escape from a difficulty by giving a technical sense to an expression which he nevertheless continues to use in a popular sense. For the purpose of preventing any difference of opinion from arising in cases likely to occur very often, we have laid down a few rules (see Clauses 17, 18, 19,) which we believe to be in accordance with the general sense of mankind, as to what shall be held to constitute possession. But, in general,

we leave it to the tribunals, without any direction, to determine whether particular property is at a particular time in the possession of a particular person or not.

Much uncertainty will still remain. This we cannot prevent. But we can, as it appears to us, prevent the uncertainty from producing any practical evil. The provision contained in Clause 61 will, we think, obviate all the inconveniences which might arise from doubts as to the exact limits which separate theft from misappropriation and from breach of trust.

The effect of that clause will be to prevent the judges from wasting their time and ingenuity in devising nice distinctions. If a case which is plainly theft comes before them, the offender will be punished as a thief. If a case which is plainly breach of trust comes before them, the offender will be punished as guilty of breach of trust. If they have to try a case which lies on the frontier, one of those thefts which are hardly distinguishable from breaches of trust, or one of those breaches of trust which are hardly distinguishable from theft, they will not trouble themselves with subtle distinctions, but leaving it undetermined by which name the offence should be called, will proceed to determine what is infinitely of greater importance, what shall be the punishment.

In theft, as we have defined it, the object of the offender always is to take property which is in the possession of a person out of that person's possession ; nor have we admitted a single exception to this rule. In the great majority of cases, our classification will coincide with the popular classification. But there are a few aggravated cases of what we designate as misappropriation and breach of trust, which bear such an

affinity to theft that it may seem idle to distinguish them from thefts ; and it certainly would be idle to distinguish such cases from thefts if the distinction were made with a view to those cases alone. But, as we have a line of distinction which we think it desirable to maintain in the great majority of cases, we think it desirable also to maintain that line in a few cases in which it may separate things which are of a very similar description.

One offence which it may be thought that we ought to have placed among thefts is the pillaging of property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person authorized to take charge of it. This crime, in our classification, falls under the head, not of theft, but of misappropriation of property not in possession.

The ancient Roman jurists viewed it in the same light. The property taken under such circumstances, they argued, being in no person's possession, could not be taken out of any person's possession. The taking, therefore, was not *furtum*, but belonged to a separate head, called the *crimen expilatæ hæreditatis*.[1] The French lawyers, however, long ago found out a legal fiction by means of which this offence was treated as theft in those parts of France where the Roman law was in force.[2] Mr. Livingston's definition of theft appears to us to exclude this species of offence ; nor indeed do we think that it could be reached by any provision of his code. That it ought to be punished with severity under some name or other is indisputable. By

[1] Justinian, *Dig.*, lib. xlvii., tit. 19.

[2] Domat., Sup. iii.

what name it should be designated may admit of some dispute. If we call it theft, we speak the popular language. If we call it misappropriation of property not in possession, we avoid an anomaly, and maintain a line which, in the great majority of cases, is reasonable and convenient. On the whole, we are inclined to maintain this line.

Again, a carrier who opens a letter intrusted to his charge, and takes thence a bank-note, would be commonly called a thief. It is certain that his offence is not morally distinguishable from theft. Here, however, as before, we think it expedient to maintain our general rule ; and we therefore designate the offence of the carrier not as theft, but as criminal breach of trust.

The illustrations which we have appended to the provisions respecting theft, the misappropriation of property not in possession, and breach of trust, will, we hope, sufficiently explain to his Lordship in Council the reasons for most of those provisions.

It may possibly be remarked, that we have not, like Mr. Livingston, made it part of our definition of theft, that the property should be of some assignable value. We would, therefore, observe that we have not done so only because we conceive that the law, as framed by us, obtains the same end by a different road. By one of the general exceptions which we have proposed (Clause 73), it is provided, that nothing shall be an offence by reason of any harm which it may cause, or be intended to cause, or be known to be likely to cause, if the whole of that harm is so slight that no person of ordinary sense and temper would complain of such harm. This provision will prevent the law of theft from being abused for the purpose of punishing those

venial violations of the right of property which the common-sense of mankind readily distinguishes from crimes, such as the act of a traveller who tears a twig from a hedge, of a boy who takes stones from another person's ground to throw at birds, of a servant who dips his pen in his master's ink. It does not appear to us that any further rule on this subject is necessary.

The offence of extortion is distinguished from the three offences which we have been considering by this obvious circumstance, that it is committed by the wrongful obtaining of a consent. In one single class of cases, theft and extortion are in practice confounded together so inextricably, that no judge, however sagacious, could discriminate between them. This class of cases, therefore, has, in all systems of jurisprudence with which we are acquainted, been treated as a perfectly distinct class; and we think that this arrangement, though somewhat anomalous, is strongly recommended by convenience. We have therefore made robbery a separate crime.

There can be no case of robbery which does not fall within the definition either of theft or of extortion; but in practice it will perpetually be matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life; assists in taking off his ornaments, and delivers them to A. Here such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means impro-

bable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though, in general, the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought, therefore, to be made known to the courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial.

His Lordship in Council will perceive that we have provided punishment of exemplary severity for that atrocious crime which is designated in the Regulations of Bengal and Madras by the name of Dacoity. This name we have thought it convenient to retain, for the purpose of denoting, not only actual gang-robbery, but the attempting to rob when such an attempt is made or aided by a gang.

The law relating to the offence of receiving stolen goods appears to require no comment.

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is, that the extortioner obtains the consent by intimidation, and a cheat by deception. There is no offence in the code with which we have found it so difficult to deal as that of cheating. It is evident

that the practising of intentional deceit for purposes of gain ought sometimes to be punished. It is equally evident that it ought not always to be punished. It will hardly be disputed that a person who defrauds a banker by presenting a forged check, or who sells ornaments of paste as diamonds, may with propriety be made liable to severe penalties. On the other hand, to punish every defendant who obtains pecuniary favors by false professions of attachment to a patron ; every legacy hunter who obtains a bequest by cajoling a rich testator ; every debtor who moves the compassion of his creditors by overcharged pictures of his misery ; every petitioner who, in his appeals to the charitable, represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion, would be highly inexpedient. In fact, if all the misrepresentations and exaggerations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word ; the buyer rises to nine, and says that he will go no higher ; the seller falsely pretends that the article is unusually good of its kind, the buyer that it is unusually bad of its kind ; the seller that the price is likely soon to rise, the buyer that it is likely soon to fall. Here we have deceptions practised for the sake of gain, yet no judicious legislator would punish these deceptions. A very large

part of the ordinary business of life is conducted all over the world, and nowhere more than in India, by means of a conflict of skill, in the course of which deception to a certain extent perpetually takes place. The moralist may regret this ; but the legislator sees that the result of the attempts of the buyer and seller to gain an unfair advantage over each other is that, in the vast majority of cases, articles are sold for the prices which it is desirable that they should fetch ; and therefore he does not think it necessary to interfere. It is enough for him to know that all this great mass of falsehood practically produces the same effect which would be produced by truth ; and that any law directed against such falsehood would in all probability be a dead letter, and would, if carried into rigorous execution, do more mischief in a month than all the lies which are told in the making of bargains throughout all the bazaars of India produce in a century.

If, then, it be admitted that many deceptions committed for the sake of gain ought to be punished, and that many such deceptions ought not to be punished, where ought the line to be run ?

It appears to us that the line which we have drawn is correct in theory; that it is not more inconvenient in practice than any other line must be which can be drawn while the civil law of India remains in its present state, and that it will be unexceptionable whenever the civil law of India shall be ascertained, digested, and corrected.

We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained ; that is to say, in all cases where the intention of the person who has by deceit obtained the

property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property if its object is only to cause a distribution of property which the law recognizes as rightful. A few examples will show the way in which this principle will operate.

A intentionally deceives Z into a belief that he is strongly attached to Z. A thus induces Z to make a will, by which a large legacy is left to A. Here A's conduct is immoral and scandalous. But still A has a legal right, on Z's death, to receive the legacy. Even if the clearest proofs of A's insincerity are laid before a tribunal, even if A in open court avows his insincerity, the will cannot, on that account, be set aside. The gain, therefore, which A obtains under Z's will is not, in the legal sense of the expression, wrongful gain. He has practised deception. He has thus caused gain to himself and loss to others. But that gain is a gain to which the civil law declares him entitled, and which the civil law will assist him to recover if it be withheld from him. That loss is a loss with which the civil law declares that the losers must put up. A therefore has not committed the offence of cheating under our definition.

But suppose that the civil law should contain, as we think that it ought to contain, a provision declaring null a will made in favor of strangers by a testator who erroneously believed his children to be dead ; and suppose that A intentionally deceives Z into a belief that Z's only son has been lost at sea, and by this deception induces Z to make a will, by which everything is left

to A. Here the case will be different. The will being null, any property which A could obtain under that will would be property which he had no legal right so to obtain, and to which another person had a legal right. The object of A has, therefore, been wrongful gain to himself, attended with wrongful loss to another party. A has, therefore, under our definition, been guilty of cheating.

Again, take the case which we before put, of a buyer and a seller. They have told each other many untruths, but none of those untruths were such as, after the article had been delivered and the price paid, would be held by a civil court to be a ground for pronouncing that either of them possessed what he had no right to possess. Though the buyer has falsely depreciated the article, yet when he takes it and pays for it, the legal right to it is transferred to him, as well as the possession. Though the seller has falsely extolled the article, yet when he receives the price and delivers the article, the legal right to the price passes with the possession. However censurable, in a moral point of view, the deceptions practised by both may have been, yet those deceptions were intended to produce a distribution of property strictly legal. Neither the buyer nor the seller, therefore, has been guilty of cheating. But if the seller has produced a sample of the article, and has falsely assured the buyer that the article corresponds to that sample, the case is different. If the article does not correspond to the sample, the buyer is entitled to have the purchase-money back. The seller has taken and kept the purchase-money without having a legal right to take or keep it, and it may be recovered from him by a legal proceeding. His gain is, therefore,

wrongful, and is attended with wrongful loss to the buyer. He is, therefore, guilty of cheating under the definition.

So, if the seller passes off ornaments of paste on the buyer for diamonds, the price which the seller receives is a price to which he has no right, and which the buyer may recover from him by an action. Here, therefore, the object of the seller has been wrongful gain, attended with wrongful loss to the buyer. The seller is, therefore, guilty of cheating.

So, if the buyer, intending to acquire possession of the goods without paying for them, induces the seller, by deception, to take a note which the buyer knows will be dishonored, the buyer is guilty of cheating. His object is to retain in his own possession money which he is legally bound to pay to the seller. The gain which he makes by retaining the money is wrongful gain, and is attended with wrongful loss to the seller. He is, therefore, within the definition.

Whether the principle on which this part of the law is framed be a sound principle, is a question which will be best determined by examining, first, whether our definition excludes anything that ought to be included ; and, secondly, whether it includes anything that ought to be excluded.

It can scarcely, we think, be contended that our definition excludes anything that ought to be included. For surely it would be unreasonable to punish, as an offence against the right of property, an act which has caused, and was intended to cause, a distribution of property which the law declares to be right, and refuses to disturb. If such an act be an offence, it must be an offence on some ground distinct from the effect

which it produces on the state of property. Thus, if a person to whom a debt is due, thinking that he shall obtain payment more easily if he assumes the appearance of being in the public service, wears a badge of office which he has no right to wear when he goes to make his demand, he is guilty of the offence defined in Clause 150; but if he gains only what he has a legal right to possess, if he deprives the debtor only of that which the debtor has no legal right to retain, he is not a wrong-doer as respects property, inasmuch as he has only rectified a wrong distribution of property.

Indeed, it appears to us that there is the strongest objection to punishing a man for a deception, and yet allowing him to retain what he has gained by that deception. What the civil law ought to say may be doubtful. But there can be no doubt that the civil and criminal law ought to say the same thing; that the one ought not to invite while the other repels; that the code ought not to be divided against itself. To send a person to prison for obtaining a sum of money, and yet to suffer him to keep that sum of money, is to hold out at once motives to deter and motives to incite. Humanity requires that punishment should be the last resource, a resource only employed when no other means can be found of producing the desired effect. Penal laws clearly ought not to be made for the preventing of deception, if deception could be prevented by means of the civil code. To tempt men, therefore, to deceive by means of the civil code, and then to punish them for deceiving, is contrary to every sound principle.

We are, therefore, not apprehensive that we shall be

thought to have granted impunity to any deception which ought to be punished as cheating.

But it is possible that our definition may be thought to include much that ought to be excluded. It certainly includes many acts which are not punishable by the law of England or of France. We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it ; a man who, by false representations, obtains an advance of money, not meaning to perform the service or to deliver the article for which the advance is given ; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person had a better claim, and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating. We cannot see why such acts as these should be treated as mere civil injuries—why they should be classed with the mere non-payment of a debt, and the mere non-performance of a contract. They are infractions of a legal right effected by deliberate dishonesty. They are more pernicious than most of the acts which will be punishable under our code. They indicate more depravity, more want of principle, more want of shame, than most of the acts which will be punishable under our code. We punish the man who gives another an angry push. We punish the man who locks another

up for a morning. We punish the man who makes a sarcastic epigram on another. We punish the man who merely threatens another with outrage. And surely the man who, by premeditated deceit, enriches himself to the wrongful loss, perhaps to the utter ruin, of another is not less deserving of punishment.

That some deceptions of this sort ought to be punished is admitted. But almost every argument which can be urged for punishing any is an argument for punishing all. The line between wilful fraudulent deception and good faith is a plain line. If there is any difficulty in applying it, that difficulty will arise, not from any defect in the line, but from the want of evidence in particular cases. But we are unable to find any reason for distinguishing one sort of fraudulent deception from another. The French courts apply a test which appears to us very objectionable. They have decided that it is not *escroquerie* to cheat by false promises, or by exciting chimerical hopes, unless the sufferer had reasons of weight for believing that the promises were sincere, and the hopes well grounded.[1] This rule seems to us to be a license for deception granted to cunning against simplicity. A weak and credulous person is more easily imposed on than a judicious and discerning person. And just so an infant is poisoned with a dose of laudanum which would hardly put a grown person to sleep; yet the poisoner is a murderer : a pregnant woman is grievously hurt by a blow which would make no impression on a boxer ; yet the person who gives such a blow is punished with exemplary severity. The law in such cases inquires

[1] Pailiet, *Manuel de Droit Français*. Note on Clause 408 of the Penal Code.

only whether the harm has been voluntarily caused or no. And why should the violation by deceit of the right of property be treated differently? The deceiver proportions his artifices to the mental strength of those whom he has to deal with, just as the poisoner proportions his drugs to their bodily strength; and we see no more reason for exempting the deceiver from punishment, because he has effected his purpose by a gross fiction which could have duped only a weak person, than for exempting the poisoner from punishment because he has effected his purpose with a few drops of laudanum, which could have been fatal only to a young child.

Some persons may be startled at our proposing to punish as a cheat every man who obtains a loan by making promises of payment which he does not mean to keep. But let it be considered that a debtor, though he may have contracted his debts honestly, though it may have been from absolute inability that he does not pay them, though his misfortunes may be the effect of no want of industry or caution on his part, is now actually liable to imprisonment. Surely it is unreasonable to detain in prison the man who, by mere misfortune, has involuntarily violated the rights of property, and to leave unpunished the man who has voluntarily, and by wilful deceit, attacked those rights, if only he is lucky enough to have money to satisfy the demands on him.

For example: A and B both borrow money from Z. A obtains it by boasting falsely of his great means, of the large remittances which he looks for from England, of his expectations from rich relations, of the promises of preferment which he has received from the govern-

ment. Having obtained it, he secretly embarks on board of a ship, intending to abscond without repaying what he has borrowed. B, on the other hand, has obtained a loan without the smallest misrepresentation, and fully purposes to repay it. The failure of an agency house in which all his funds were placed renders it impossible for him to meet his engagements. Can it be doubted which of these two debtors ought rather to be sent to prison? Can it be doubted that A is a proper subject of punishment, and that B is not so? Yet at present A, if he is arrested before the ship sails, and lays down the money, enjoys entire impunity, while B may pass years in a jail. It would be improper for us here to discuss at length the question of imprisonment for debt. But it seems clear that whether it be or be not proper that a debtor, as such, should be imprisoned, a distinction ought to be made between the honest and dishonest debtor. We are inclined to believe that the indiscriminate imprisonment of all debtors would be found to be unnecessary if this distinction were made. But while they are all put on the same footing, the law must be formed upon a rough calculation of the chances of dishonesty. All must be treated worse than honest debtors ought to be treated, because none are treated so severely as dishonest debtors ought to be treated. A respectable man must be imprisoned for a storm, a bad season, or a fire, because his dishonest neighbor is not liable to criminal proceedings for cheating. We are satisfied that the only way to get rid of imprisonment for debt, as debt, is to extend the penal law on the subject of cheating in a manner similar to that in which we propose to extend it.

The provisions which we have framed on the subject

of fraudulent bankruptcy are necessarily imperfect, and must remain so, until the whole of that important part of the law has undergone an entire revision.

The provisions which we propose on the subject of mischief do not appear to us to require any explanation.

We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then we propose to visit it with a light punishment, unless it be attended with aggravating circumstances.

These aggravating circumstances are of two sorts. Criminal trespass may be aggravated by the way in which it is committed. It may also be aggravated by the end for which it is committed.

There is no sort of property which it is so desirable to guard against unlawful intrusion as the habitations in which men reside, and the buildings in which they keep their goods. The offence of trespassing on these places we designate as house-trespass, and we treat it as an aggravated form of criminal trespass.

House-trespass, again, may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass ; the latter we designate as house-breaking. Again, house-trespass, in every form, may be aggravated by the time at which it is committed. Trespass of this sort has, for obvious reasons, always been considered as a more serious

offence when committed by night than when committed by day. Thus we have four aggravated forms of that sort of criminal trespass, which we designate as house-trespass, lurking house-trespass, house-breaking, lurking house-trespass by night, and house-breaking by night.

These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to a murder. It may also often happen that a criminal trespass which is venial as respects the mode may be of the greatest enormity as respects the end, and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus A may commit house-breaking by night for the purpose of playing some idle trick on the inmates of a dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang-robbery. Here A commits trespass in the worst way. B commits trespass with the worst object. In our provisions we have endeavored to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment.

NOTE (O)

ON THE CHAPTER OF THE ILLEGAL PURSUIT OF LEGAL RIGHTS

This chapter is intended to prevent the enforcing of just claims by means which are so liable to be abused

that, even when used for an honest end, they ought not to be tolerated. A creditor, for example, who has repeatedly in vain urged his debtor to pay him, finds that he has no chance of recovering his money without a troublesome and expensive lawsuit. He accordingly seizes on property belonging to the debtor, sells it, keeps only just as much as will satisfy the debt, and sends back the surplus to the debtor. This act is distinguished from theft by one of the broadest lines of demarcation which can be found in the code. It is not a fraudulent act. It is intended to correct a wrongful distribution of property, to do what the courts of law, if recourse were had to them, would order to be done. Public feeling would be shocked if such a creditor were called by the ignominious name of a thief.

At the same time, it cannot be doubted that it would be most dangerous to allow men to pronounce judgment, however honestly, in their own favor, and to proceed to take property in execution for the purpose of satisfying that judgment. A specific thing, indeed, which a man has a right to possess, it is no offence in him to take wherever he finds it. He may commit other offences in order to take it. But the mere taking is no crime at all. If Z has borrowed A's horse, and illegally refuses to return it, it is no offence at all in A to take the horse if he sees it feeding by the roadside. If A enters Z's stable in order to take it, he may commit house-trespass, but he commits no theft. If A knocks Z down in order to take it, he may be guilty of assault, or of voluntarily causing bodily hurt, but he commits no robbery. This license, as it appears to us, must be confined to cases in which specific things are taken. In such cases, the chance of abuse is very

small. But where one thing is due, and another is taken ; where a man seizes on another's furniture in satisfaction of a promissory note, or drives away another's cattle by way of paying himself for a suit of clothes, the case is very different. Honest men so often think themselves entitled to more than a court of justice would award them, that it will be difficult to say, in cases in which the taker really has a plausible claim, and in which the value of what has been taken is not out of all proportion to the value of what is claimed, that the taker has acted dishonestly. In such cases, therefore, we think it absolutely necessary to provide a punishment for the illegal pursuit of legal rights. We observe that the French courts have decided that the taking of property by a creditor in good faith, for the purpose of paying himself, is not theft ; and this decision seems to us, as we have said, to be well grounded. But it does not appear to us that such an act is punishable under any clause of the French code ; and this we consider as a serious omission.

NOTE (P)

ON THE CHAPTER OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE

We agree with the great body of jurists in thinking that in general a mere breach of contract ought not to be an offence, but only to be the subject of a civil action.

To this general rule there are, however, some exceptions. Some breaches of contract are very likely to cause evil such as no damages or only very high

damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbable that any damages can be obtained. Such breaches of contract are, we conceive, proper subjects for penal legislation.

In England it would be unnecessary to provide a punishment for a stage-coachman who should, however maliciously or dishonestly, drive on, leaving behind a passenger whom he is bound to carry. The evil inflicted is seldom very serious. The country is everywhere well inhabited. The roads are secure. The means of conveyance can easily be obtained, and damages sufficient to compensate for any inconvenience or expense which may have been suffered can easily be recovered from the coach proprietors. But the mode of performing journeys and the state of society in this country are widely different. It is often necessary for travellers of the upper classes, even for English ladies, ignorant perhaps of the native languages, and with young children at their breasts, to perform journeys of many miles over uninhabited wastes, and through jungles in which it is dangerous to linger for a moment, in palanquins borne by persons of the lowest class. If, as sometimes happens, these persons should, in a solitary place, set down the palanquin and run away, it is difficult to conceive a more distressing situation than that in which their employer would be left. None but very high damages would be any reparation for such a wrong. But the class of people by whom alone such a wrong is at all likely to be committed can pay no damages. The whole property of all the delinquents would probably not cover the expense of prosecuting them civilly. It therefore appears to us that breaches of

contract of this description may, with strict propriety, be treated as crimes.

The law which we have framed on this subject applies, it will be perceived, only to cases in which the contract with the bearers is lawful. The traveller, therefore, who resorts to the highly culpable, though we fear too common, practice of unlawfully compelling persons against their will to carry his palanquin or his baggage will not be protected by it. If they quit him, it is what they have a legal right to do, nor will they be punishable, whatever may be the consequence of their desertion.

Another species of contract which ought, we conceive, to be guarded by a penal sanction is that by which seamen are bound to their employers. The insubordination of seamen during a voyage often produces fatal consequences. Their desertion in port may cause evils such as very large damages only could repair. But they are utterly unable to pay any damages for which it would be worth while to sue. If a ship in the Hoogly, at a critical time of the year, is compelled by the desertion of some of the crew to put off its voyage for a fortnight, it would be mere mockery to tell the owners that they may sue the runaways for damages in the supreme court.

We also think that persons who contract to take care of infants, of the sick, and of the helpless lay themselves under an obligation of a very peculiar kind, and may with propriety be punished if they omit to discharge their duty. The misery and distress which their neglect may cause is such as the largest pecuniary payment would not repair. They generally come from the lower ranks of life, and would be unable to pay anything.

We therefore propose to add to this class of contracts the sanction of the penal law.

Here we are inclined to stop. We have, indeed, been urged to go farther, and to punish as a criminal every menial servant who, before the expiration of the term for which he is hired, quits his employer. But it does not appear to us that, in the existing state of the market for that description of labor in India, good masters are in much danger of being voluntarily deserted by their menial servants, or that the loss or inconvenience occasioned by the sudden departure of a cook, a groom, a hurkaru, or a khidmutgar, would often be of a very serious description. We are greatly apprehensive that by making these petty breaches of contracts offences, we should give no protection to good masters, but means of oppression to bad ones.

NOTE (Q)

ON THE CHAPTER OF OFFENCES RELATING TO MARRIAGE

As this is a part of the law in which the English inhabitants of India are peculiarly interested, and which we have framed on principles widely different from those in which the English law on the same subject is framed, we think it necessary to offer some explanations.

The act which in the English law is designated as bigamy is always an immoral act. But it may be one of the most serious crimes that can be committed. It may be attended with circumstances which may excuse, though they cannot justify it.

The married man who, by passing himself off as un-

married, induces a modest woman to become, as she thinks, his wife, but in reality his concubine, and the mother of an illegitimate issue, is guilty of one of the most cruel frauds that can be conceived. Such a man we would punish with exemplary severity.

But suppose that a person arrives from England, and pays attentions to one of his countrywomen at Calcutta. She refuses to listen to him on any other terms than those of marriage. He candidly owns that he is already married. She still presses him to go through the ceremony with her. She represents to him that if they live together without being married she shall be an outcast from society, that nobody in India knows that he has a wife, that he may very likely never fall in with his wife again, and that she is ready to take the risk. The lover accordingly agrees to go through the forms of marriage.

It cannot be disputed that there is an immense difference between these two cases. Indeed, in the second case the man can hardly be said to have injured any individual in such a manner as calls for legal punishment. For what individual has he injured? His second wife? He has acted by her consent, and at her solicitation. His first wife? He has certainly been unfaithful to his first wife. But we have no punishment for mere conjugal infidelity. He will often have injured his first wife no more than he would have done by keeping a mistress, calling that mistress by his own name, introducing her into every society as his wife, and procuring for her the consideration of a wife from all his acquaintance. The legal rights of the first wife and of her children remain unaltered. She is the wife; the second is the concubine. But suppose that the first

wife has herself left her husband, and is living in adultery with another man. No individual can then be said to be injured by this second invalid marriage. The only party injured is society, which has undoubtedly a deep interest in the sacredness of the matrimonial contract, and which may therefore be justified in punishing those who go through the forms of that contract for the purpose of imposing on the public.

The law of England on the subject of bigamy appears to us to be, in some cases too severe, and in others too lenient. It seems to bear a close analogy to the law of perjury. The English law on these two subjects has been framed less for the purpose of preventing people from injuring each other, than for the purpose of preventing the profanation of a religious ceremony. It therefore makes no distinction between perjury which is intended to destroy the life of the innocent, and perjury which is intended to save the innocent; between bigamy which produces the most frightful suffering to individuals, and bigamy which produces no suffering to individuals at all. We have proceeded on a different principle. While we admit that the profanation of a ceremony so important to society as that of marriage is a great evil, we cannot but think that evil immensely aggravated when the profanation is made the means of tricking an innocent woman into the most miserable of all situations. We have therefore proposed that a man who deceives a woman into believing herself his lawful wife when he knows that she is not so, and induces her, under that persuasion, to cohabit with him, should be punished with great severity.

There are reasons similar, but not exactly the same, for punishing a woman who deceives a man into con-

tracting with her a marriage which she knows to be invalid. For this offence we propose a punishment which, for reasons too obvious to require explanation, is much less severe than that which we have provided for a similar deception practised by a man on a woman.

We also propose to punish every person who, with what we have defined as a fraudulent intention, goes through the forms of a marriage which he knows to be invalid.

We do not at present propose any law for punishing a person who, without practising any deception, or intending any fraud, goes through the forms of a marriage which he knows to be invalid. The difficulty of framing such a law in this country is great. To make all classes subject to one law would, evidently, be impossible. If the law be made dependent on the race, birthplace, or religion of the offender, endless perplexity would arise. Races are mixed; religion may be changed or dissembled. An East Indian, half English, half Asiatic by blood, may call himself a Mahometan or a Hindoo; and there exists no test by which he can be convicted of deception. We by no means intend to express an opinion that these difficulties may not be got over. But we are satisfied that this part of the penal law cannot be brought to perfection till the law of marriage and divorce has been thoroughly revised.

We leave it to his Lordship in Council to consider whether, during the interval which must elapse before the necessary inquiry can be made, it might not be, on the whole, better to retain the existing law applicable to Christians in India, objectionable as that law is, than to allow absolute impunity to bigamy.

We considered whether it would be advisable to pro-

vide a punishment for adultery, and, in order to enable ourselves to come to a right conclusion on the subject, we collected facts and opinions from all the three presidencies. The opinions differ widely. But as to the facts, there is a remarkable agreement.

The following positions we consider as fully established; first, that the existing laws for the punishment of adultery are altogether inefficacious for the purpose of preventing injured husbands of the higher classes from taking the law into their own hands; secondly, that scarcely any native of the higher classes ever has recourse to the courts of law in a case of adultery for redress against either his wife or her gallant; thirdly, that the husbands who have recourse in cases of adultery to the courts of law are generally poor men whose wives have run away; that these husbands seldom have any delicate feelings about the intrigue, but think themselves injured by the elopement; that they consider their wives as useful members of their small households; that they generally complain, not of the wound given to their affections, not of the stain on their honor, but of the loss of a menial whom they cannot easily replace, and that, generally, their principal object is that the woman may be sent back. The fiction by which seduction is made the subject of an action in the English courts is, it seems, the real gist of most proceedings for adultery in the Mofussil. The essence of the injury is considered by the sufferer as lying in the "per quod servitium amisit." Where the complainant does not ask to have his wife again, he generally demands to be reimbursed for the expenses of his marriage.

These things being established, it seems to us that

no advantage is to be expected from providing a punishment for adultery. The population seems to be divided into two classes—those whom neither the existing punishment, nor any punishment which we should feel ourselves justified in proposing, will satisfy, and those who consider the injury produced by adultery as one for which a pecuniary compensation will sufficiently atone. Those whose feelings of honor are painfully affected by the infidelity of their wives will not apply to the tribunals at all. Those whose feelings are less delicate will be satisfied by a payment of money. Under such circumstances, we think it best to treat adultery merely as a civil injury.

Some who admit that the penal law now existing on this subject is in practice of little or no use, yet think that the code ought to contain a provision against adultery. They think that such a provision, though inefficacious for the repressing of vice, would be creditable to the Indian government, and that, by omitting such a provision, we should give a sanction to immorality. They say, and we believe with truth, that the higher class of natives consider the existing penal law on the subject as far too lenient, and are unable to understand on what principle adultery is treated with more tenderness than forgery or perjury.

These arguments have not satisfied us that adultery ought to be made punishable by law. We cannot admit that a penal code is by any means to be considered as a body of ethics, that the legislature ought to punish acts merely because those acts are immoral, or that, because an act is not punished at all, it follows that the legislature considers that act as innocent. Many things which are not punishable are morally worse than many

things which are punishable. The man who treats a generous benefactor with gross ingratitude and insolence deserves more severe reprehension than the man who aims a blow in a passion, or breaks a window in a frolic. Yet we have punishments for assault and mischief, and none for ingratitude. The rich man who refuses a mouthful of rice to save a fellow-creature from death may be a far worse man than the starving wretch who snatches and devours the rice. Yet we punish the latter for theft, and we do not punish the former for hard-heartedness.

That some classes of the natives of India disapprove of the lenity with which adultery is now punished we fully believe, but this, in our opinion, is a strong argument against punishing adultery at all. There are only two courses which, in our opinion, can properly be followed with respect to this and other great immoralities. They ought to be punished very severely, or they ought not to be punished at all. The circumstance that they are left altogether unpunished does not prove that the legislature does not regard them with disapprobation. But when they are made punishable, the degree of severity of the punishment will always be considered as indicating the degree of disapprobation with which the legislature regards them. We have no doubt that the natives would be far less shocked by the total silence of the penal law touching adultery than by seeing an adulterer sent to prison for a few months while a coiner is imprisoned for fourteen years.

An example will illustrate our meaning. We have determined not to make it penal in a wealthy man to let a fellow-creature, whose life he could save by dis-

bursing a few pice, die at his feet of hunger. No rational person, we are convinced, will suppose, because we have framed the law thus, that we do not hold such inhumanity in detestation. But if we had proposed to punish such inhumanity with a fine not exceeding fifty rupees, we should have offered a gross outrage to the feelings of mankind. That we do not think a certain act a proper subject for penal legislation, does not prove that we do not think that act a great crime. But that, thinking it a proper subject for penal legislation, we propose to visit it with a slight penalty, does seem to indicate that we do not think it a great crime.

Nobody proposes that adultery should be punished with a severity at all proportioned to the misery which it produces in cases where there is strong affection and a quick sensibility to family honor. We apprehend that among the higher classes in this country nothing short of death would be considered as an expiation for such a wrong. In such a state of society we think it far better that the law should inflict no punishment than that it should inflict a punishment which would be regarded as absurdly and immorally lenient.

There is yet another consideration which we cannot wholly leave out of sight. Though we well know that the dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is, unhappily, very different from that of the women of

England and France. They are married while still children. They are often neglected for other wives while still young. They share the attentions of a husband with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking, by law, an evil so deeply-rooted in the manners of the people of this country as polygamy. We leave it to the slow, but we trust the certain, operation of education and of time. But while it exists, while it continues to produce its never-failing effects on the happiness and respectability of women, we are not inclined to throw into a scale, already too much depressed, the additional weight of the penal law. We have given the reasons which lead us to believe that any enactment on this subject would be nugatory. And we are inclined to think that if not nugatory it would be oppressive. It would strengthen hands already too strong. It would weaken a class already too weak. It will be time enough to guard the matrimonial contract by penal sanctions when that contract becomes just, reasonable, and mutually beneficial.

NOTE (R)

ON THE CHAPTER OF DEFAMATION

THE essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of

the unfavorable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavorable sentiments is exposed.

According to the theory of the criminal law of England, the essence of the crime of private libel consists in its tendency to provoke breach of the peace ; and, though this doctrine has not, in practice, been followed out to all the startling consequences to which it would legitimately lead, it has not failed to produce considerable inconvenience.

It appears to us evident that between the offence of defaming and the offence of provoking to a breach of the peace, there is a distinction as broad as that which separates theft and murder. Defamatory imputations of the worst kind may have no tendency to cause acts of violence. Words which convey no discreditable imputation whatever may have that tendency in the highest degree. Even in cases where defamation has a tendency to cause acts of violence, the heinousness of the defamation, considered as defamation, is by no means proportioned to its tendency to cause such acts ; nay, circumstances which are great aggravations of the offence, considered as defamation, may be great mitigations of the same offence considered as a provocation to a breach of the peace. A scurrilous satire against a friendless woman, published by a person who carefully conceals his name, would be defamation in one of its most odious forms. But it would be only by a legal fiction that the satirist could be said to provoke a breach of the peace. On the other hand, an imputation on the courage of an officer contained in a private letter, meant to be seen only by that officer and two or three other persons, might, considered as defamation, be a very

venial offence. But such an imputation would have an obvious tendency to cause a serious breach of the peace.

On these grounds we have determined to propose that defamation shall be made an offence, without any reference to its tendency to cause acts of illegal violence.

We considered whether it would be advisable to make a distinction between the different modes in which defamatory imputations may be conveyed ; and we came to the conclusion that it would not be advisable to make any such distinction.

By the English law, defamation is a crime only when it is committed by writing, printing, engraving, or some similar process. Spoken words reflecting on private character, however atrocious may be the imputations which those words convey, however numerous may be the assembly before which such words are uttered, furnish ground only for a civil action. Herein the English law is scarcely consistent with itself. For if defamation be punished on account of its tendency to cause breach of the peace, spoken defamation ought to be punished even more severely than written defamation, as having that tendency in a higher degree. A person who reads in a pamphlet a calumnious reflection on himself, or on some one for whom he is interested, is less likely to take a violent revenge than a person who hears the same calumnious reflection uttered. Public men who have, by long habit, become callous to slander and abuse in a printed form, often show acute sensibility to imputations thrown on them to their faces. Indeed, defamatory words, spoken in the presence of the person who is the object of them, necessarily

have more of the character of a personal affront, and are, therefore, more likely to cause breach of the peace than any printed libel.

The distinction which the English criminal law makes between written and spoken defamation is generally defended on the ground that written defamation is likely to be more widely spread, and to be more permanent, than spoken defamation. These considerations do not appear to us to be entitled to much weight. In the first place, it is by no means necessarily the fact that written defamation is more extensively circulated than spoken defamation. Written defamation may be contained in a letter intended for a single eye. Spoken defamation may be heard by an assembly of many thousands. It seems to us most unreasonable that it should be penal to say, in a private letter, that a man is dissipated, and not penal to stand up at the town-hall, and there, before the whole society of Calcutta, falsely to accuse him of poisoning his father.

In the second place, it is not necessarily the fact that the harm caused by defamation is proportioned to the extent to which the defamation is circulated. Some slanders—and those slanders of a most malignant kind—can produce harm only while confined to a very small circle, and would be at once refuted if they were published. A malignant whisper addressed to a single hearer, and meant to go no farther, may indicate greater depravity, may cause more intense misery, and may deserve more severe punishment than a satire which has run through twenty editions. A person, for example, who in private conversation should infuse into the mind of a husband suspicions of the fidelity of a virtuous wife, might be a defamer of a far worse de-

scription than one who should insert the lady's name in a printed lampoon.

It must be allowed that, in general, a printed story is likely to live longer than a story which is only circulated in conversation. But, on the other hand, it is far easier for a calumniated person to clear his character, either by argument or by legal proceedings, from a charge fixed in a printed form, than from a shifting rumor, which nobody repeats exactly as he heard it. In general, we believe, a man would rather see in a newspaper a story discreditable to him which he had the means of refuting, than know that such a story, though not published, was current in society.

On the whole, we are so far from being able to discover any reason for exempting any mode of defamation from all punishment, that we have not even thought it right to provide different degrees of punishment for different modes of defamation. We do not conceive that on this subject any general rule can, with propriety, be laid down. We have, therefore, thought it best to leave to the courts the business of apportioning punishment, with due regard to the circumstances of every case.

We have thought it necessary, under the peculiar circumstances of this country, to lay down for the guidance of the courts a rule which, if we were legislating for a population among whom there was a uniform standard of morality and honor, might appear superfluous. India is inhabited by races which differ widely from each other in manners, tastes, and religious opinions. Practices which are regarded as innocent by one large portion of society excite the horror of another large portion. A Hindoo would be

driven to despair if he knew that he was believed by persons of his own race to have done something which a Christian or a Mussulman would consider as indifferent or as laudable. Where such diversities of opinion exist, that part of the law which is intended to prevent pain arising from opinion ought to be sufficiently flexible to suit those diversities. We have, therefore, directed the judge not to decide the question whether an imputation be or be not defamatory, by reference to any particular standard, however correct, of honor, of morality, or of taste, but to extend an impartial protection to opinions which he regards as erroneous, and to feelings with which he has no sympathy.

There are nine excepted cases (see Clauses from 470 to 478, inclusive) in which we propose to tolerate imputations prejudicial to character.

The exception which stands first in order will probably be thought by many persons objectionable. It is opposed to the rules of the English criminal law. It goes, we fear, beyond what even the boldest reformers of English law have proposed. It is at variance with the provisions of the French code, and with the sentiments of the most distinguished French jurists. It is at variance also with the provisions of the code of Louisiana. It is, therefore, with some diffidence that we venture to lay before the Governor-General in Council the results of a long and anxious consideration of this question.

The question is, whether the truth of an imputation prejudicial to character should, in all cases, exempt the author of that imputation from punishment as a defamer. We conceive that it ought to exempt him.

It will hardly be disputed, even by those who dissent

from us on this point, that there is a marked distinction between true and false imputations, as respects both the degree of malignity which they indicate, and the degree of mischief which they produce. The accusing a man of what he has not done implies, in a vast majority of cases, greater depravity than the accusing him of what he has done. The pain which a false imputation gives to the person who is the object of it is clear, uncompensated evil. There is no set-off whatever. The pain which a true imputation gives to the person who is the object of it is in itself an evil, and, therefore, ought not to be wantonly inflicted. But there is often some counterbalancing good. A true imputation may produce a wholesome effect on the person who has, by his misconduct, exposed himself to it. It may deter others from imitating his example. It may set them on their guard against his bad designs.

Not only do true imputations generally produce some good to counterbalance the evil caused by them, but in many cases this counterbalancing good appears to us greatly to preponderate. However skilfully penal laws may be framed, however vigorously they may be carried into execution, many bad practices will always be out of reach of the tribunals. The state of society would be deplorable if public opinion did not repress much that legislators are compelled to tolerate. The wisest legislators have felt this, and have assigned it as a reason for not visiting certain acts with legal punishment, that those acts will be sufficiently punished by general disapprobation. It seems inconsistent and unwise to rely on the public opinion in certain cases as a valuable auxiliary to the law, and at the same time to

treat the expression of that opinion in those very cases as a crime.

It is easy to put cases about which there could scarcely be any difference of opinion. A person who has been guilty of gross acts of swindling at the Cape comes to Calcutta, and proposes to set up a house of agency. A person who has been forced to fly from England on account of his infamous vices repairs to India, opens a school, and exerts himself to obtain pupils. A captain of a ship induces natives to emigrate, by promising to convey them to a country where they will have large wages and little work. He takes them to a foreign colony, where they are treated like slaves, and returns to India to hold out similar temptations to others. A man introduces a common prostitute as his wife into the society of all the most respectable ladies of the presidency. A person in a high station is in the habit of encouraging ruinous play among young servants of the Company. In all these cases, and in many others which might be named, we conceive that a writer who publishes the truth renders a great service to the public, and cannot, without a violation of every sound principle, be treated as a criminal.

There are, undoubtedly, many cases in which the spreading of true reports, prejudicial to the character of an individual, would hurt the feelings of that individual, without producing compensating advantage in any quarter. The proclaiming to the world that a man keeps a mistress, that he is too much addicted to wine, that he is penurious in his housekeeping, that he is slovenly in his person ; the raking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband

and a father, and who has attained some post which requires gravity and even sanctity of character, can seldom or never produce any good to the public sufficient to compensate for the pain given to the person attacked, and to those who are connected with him. Yet we greatly doubt whether, where the imputations are true, it be advisable to inflict on the propagators of such miserable scandal any legal punishment, in addition to that general aversion and contempt with which their calling and their persons are everywhere regarded. Even in such cases, the question whether the imputation be true or false is not an unimportant question. Those who would not allow truth to be in such cases a justification, would admit that it ought generally to be a mitigating circumstance. Indeed, we find it impossible to imagine any case in which we should punish a man who told no more than the truth respecting another, as severely as if what he told had been a lie invented to blast the reputation of that other.

These two propositions, then, we consider as established : first, that in some cases of prosecution for defamation, the truth of the imputations alleged to be defamatory ought to be a justification ; secondly, that in the vast majority of cases, if not in all, truth, if it be not a justification, ought to be a mitigation.

From these two propositions a third proposition necessarily follows : that in all cases of prosecution for defamation, if the defendant avers that the imputations complained of as defamatory are true, the court ought to go into the question of the truth of those imputations.

This ought to be done, not only in justice to the public, and to the defendant, but in justice to the innocent complainant. It must not be forgotten that one of the

most important ends which a person proposes to himself in prosecuting a slanderer is the refuting of the slander. He generally considers the punishment of the offender as a secondary object ; and, when there is no circumstance of peculiar aggravation in the case, is often willing to stay proceedings after obtaining a retractation and apology. To clear his fame is his first object. It is, we conceive, an object for the attaining of which he is entitled to the assistance of the law. But it is an object which cannot be attained unless the courts go into the question of truth.

The effect of a rule excluding evidence of the truth is to put on a par descriptions of persons between whom it is desirable to make the widest distinction. The public-spirited man who warns the mercantile community against a notorious cheat, or advises families not to admit into their intimacy a practised seducer of innocence, is placed on the same footing with the slanderer who invents the most infamous falsehoods against persons of the purest character. On the other hand, a man who has, without the slightest reason, been held up to the world as a seducer or a swindler, is placed in exactly the same situation with one who well deserves those disgraceful names. So defective is the investigation that it leaves a suspicion lying on the most innocent, and no more than a suspicion lying on the most guilty.

We therefore think that in all cases of prosecution for defamation, the courts ought to allow the question of truth to be gone into. But if in all cases the courts allow the question of truth to be gone into, we are satisfied that no respectable person will venture to institute a prosecution for defamation in a case in which

he knows that the truth of the defamatory matter is likely to be proved. He will feel that, by prosecuting, he should injure his own character far more deeply than any libeller can do. However disagreeable it may be to his feelings that a discreditable story concerning him should be repeated in society, and should furnish paragraphs for the newspapers, it must be much more disagreeable that such a story should be proved in open court by legal evidence. By prosecuting, he turns what was at most a strong suspicion into an absolute certainty. While he forbears to prosecute, many people will probably disbelieve the scandalous report; many will doubt about its truth. The mere circumstance that he abstains from prosecuting is no proof of guilt. It is notorious that slanders are often passed by with silent contempt by those who are the objects of them. Indeed, in a country where the Press is free, a man whose station exposes him to remark would have nothing to do but to prosecute, if he should institute legal proceedings every time that he might be calumniated.

It seems to us, therefore, certain that a man on whose character imputations have been thrown, which can be proved to be true, will, if he possess ordinary prudence and ordinary sensibility, abstain from having recourse to a court of law, which will fully investigate the truth of those imputations. By having recourse to a court of law, he would show that he belonged to a class of persons who are the last that a legislator would wish to favor; to that class of persons in whom a sense of shame is weak, and the malicious passions strong, and who are content to incur dishonor for the chance of obtaining revenge.

Being, therefore, of opinion that, in all cases of prosecution for defamation, evidence of the truth of the imputations alleged to be defamatory ought to be received, and being of opinion that practically there is no difference between receiving evidence of truth and allowing truth to be a justification, we have thought it advisable to provide, expressly, that truth shall always be a justification. By framing the law thus, we have not in the smallest degree diminished the real security of private character, or the real risk of detraction. We have merely made the language of the code correspond with its virtual operation.

As we are satisfied that no practical mischief will be produced by the rule which we have proposed, we think that its perfect simplicity and certainty are strong reasons for adopting it.

If it be not adopted, it will be necessary to take one of two courses : either to provide that truth shall in no case be a justification, or to provide that truth shall be a justification in some cases and not in others. To the former course we feel, for reasons which we have already assigned, insurmountable objections. The effect of such a state of the law would be that eminent public services would often be treated as crimes. If the latter course be taken, we are convinced that it would be found impossible to draw any line approaching to accuracy. We are convinced that it would be necessary to leave to the judges an almost boundless discretion, a discretion which no two judges would exercise in the same manner.

It has been suggested to us, from quarters entitled to great respect, that it would be a preferable course to admit in every case the truth of matter alleged to be

defamatory to be given in evidence, for the purpose of proving that the accused person had not acted maliciously ; but not to allow the proof of the truth to be a justification if it should appear that reputation had been maliciously assailed.

If a provision of this kind were adopted, it would, for the reasons which we have already given, be in practice nugatory. For no respectable person would prosecute the author of an imputation which could be proved to be true. And we take it for granted that the law of procedure will not be framed in so cruel and unreasonable a manner as to permit a prosecution for defamation to be instituted in opposition to the wishes of the person defamed. Such a power of prosecution would scarcely ever be used by a friend of the person defamed; it would never be used by a judicious friend ; and it would be a most formidable weapon in the hands of a malignant enemy.

But if the provision which we are considering were not certain to be in practice nugatory, we should think it a highly objectionable provision. When an act is of such a description that it would be better that it should not be done, it is quite proper to look at the motives and intentions of the doer, for the purpose of deciding whether he shall be punished or not. But when an act which is really useful to society, an act of a sort which it is desirable to encourage, has been done, it is absurd to inquire into the motives of the doer, for the purpose of punishing him if it shall appear that his motives were bad.

If A kills Z, it is proper to inquire whether the killing was malicious ; for killing is *prima facie* a bad act. But if A saves Z's life, no tribunal inquires whether A

did so from good feeling, or from malice to some person who was bound to pay Z an annuity; for it is better that human life should be saved from malice than not at all. If A sets on fire a quantity of cotton belonging to Z, it is proper to inquire whether A acted maliciously; for the destruction of valuable property by fire is *prima facie* a bad act. But if Z's cotton is burning, and A puts it out, no tribunal inquires whether A did so from good feeling or from malice to some other dealer in cotton, who, if Z's stock had been destroyed, would have been a great gainer; for the saving of valuable property from destruction is an act which it is desirable to encourage, and it is better that such property should be saved from bad motives than that it should be suffered to perish. Since, then, no act ought to be made punishable on account of malicious intention, unless it be in itself an act of a kind which it is desirable to prevent, it follows that malice is not a test which can with propriety be used for the purpose of determining what true imputations on character ought to be punished, and what true imputations on character ought not to be punished; for the throwing of true imputations on character is not *prima facie* a pernicious act. It may, indeed, be a very pernicious act; but we are not prepared to say that in the majority of instances it is so. We are sure that it is often a great public service; and we are sure that it may be very pernicious when it is not done from malice, and that it may be a great public service when it is done from malice. It is perfectly conceivable that a person might, from no malicious feeling, but from an honest though austere and injudicious zeal for what he might consider as the interests of religion and morality, drag before the public frailties which it would be far

better to leave in obscurity. It is also perfectly conceivable that a person who has been concerned in some odious league of villany and has quarrelled with his accomplices, may, from vindictive feelings, publish the history of their proceedings, and may, by doing so, render a great service to society. Suppose that a knot of sharpers lives by seducing young men to the gaming-table and pillaging them to their last rupee. Suppose that one of these knaves, thinking himself ill-used in the division of the plunder, should revenge himself by printing an account of the transactions in which he has been concerned. He is prosecuted by the rest of the gang for defamation. He proves that every word in his account is true. But it is admitted that his only motives for publishing it were rancorous hatred and disappointed rapacity. It would surely be most unreasonable in the court to say: "You have told the public a truth which it greatly concerned the public to know; you have been the saving of many promising youths; you have been the means of ridding society of a dreadful pest; you have done, in short, what it was most desirable that you should do; but as you have done this, not from public spirit, but from dislike of your old associates, we pronounce you guilty of an offence, and condemn you to fine and imprisonment."

It is evident that society cannot spare any portion of the services which it receives. Far from scrutinizing the motives which lead people to render such services, and punishing such services when they proceed from bad motives, all societies are in the habit of offering motives addressed to the selfish passions of bad men for the purpose of inducing those men to do what is beneficial to the mass. We offer pardons and pecuniary

rewards to the worst members of the community for the purpose of inducing them to betray their accomplices in guilt. That the quarrels of rogues are the security of honest men, is an important truth which has passed into a proverb ; and of that security we should, to a certain extent, deprive honest men if we were to make it an offence in one rogue to speak the truth about another rogue under the influence of passions excited in the course of a quarrel.

We have hitherto argued this point on the supposition that by malice is meant real malice, and not a fictitious, a constructive malice. We have the strongest objections to introducing into the code such a kind of malice—a malice of which a person may be acquitted when it is clear that he has acted from the most deadly personal rancor, and found guilty when those who find him guilty are satisfied that he has acted only from the best feelings—a malice which may be only the technical name for benevolence.

On these grounds, we recommend to the Governor-General in Council that the first exception, as we have drawn it, be suffered to stand part of the code.

The remaining exceptions will not require so long a defence : by Clause 471 we allow the public conduct of public functionaries to be discussed, provided that such discussion be conducted in good faith. That the advantages arising from such discussion far more than compensate for the pain which it occasionally gives, will hardly be disputed by any English statesman.

But there are public men who are not public functionaries. Persons who hold no office may yet, in this country, take a very active part in urging or opposing the adoption of measures in which the community is

deeply interested. It appears clear to us that every person ought to be allowed to comment, in good faith, on the proceedings of these volunteer servants of the public, with the same freedom with which we allow him to comment on the proceedings of the official servants of the public. We have provided for this by Clause 472.

By Clause 473 we have allowed all persons freely to discuss in good faith the proceedings of courts of law, and the characters of parties, agents, and witnesses as connected with those proceedings. It is almost universally acknowledged that the courts of law ought to be thrown open to the public. But the advantage of throwing them open to the public will be small, indeed, if the few who are able to press their way into the court are forbidden to report what has passed there to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed. The only reason that the whole community is not admitted to hear every trial that takes place is that it is physically impossible that they should find room ; and, by Clause 473, we do our best to counteract the effect of this physical impossibility.

Whether public writers ought to be allowed to publish comments on trials while those trials are still pending, is a question which, in the present state of India, it is hardly worth while to discuss. We have not thought it necessary to insert any provision on that subject in the chapter of offences against public justice; and such a provision, even if it were necessary, would evidently not belong to the head of defamation, for the harm done by such comments, as respects public justice,

is exactly the same when the comments are laudatory as when they are abusive.

By Clause 474 we allow every person to criticise, in good faith, published books, works of art which are publicly exhibited, and other similar performances.

By Clause 475 we allow a person under whose authority others have been placed, either by their own consent or by the law, to censure, in good faith, those who are so placed under his authority, as far as regards matter to which that authority relates.

By Clause 476 we allow a person to prefer an accusation against another, in good faith, to any person who has lawful authority to restrain or punish the accused.

By Clause 477 we have excepted from the definition of defamation private communications which a person makes, in good faith, for the protection of his own interests ; and by Clause 478 we have excepted private communications which a person makes in good faith for the benefit of others.

It will be observed that in the eight last exceptions we do not require that an imputation should be true. We require only that it should be made in good faith ; for to require in these cases that the imputation should be true, would be to render these exceptions mere nullities. Whether a public functionary is or is not fit for his situation ; whether a person who has bestirred himself to get up a petition in favor of a public measure ought to be considered as an enlightened and public-spirited citizen, or as a foolish meddler ; whether a person who has been tried for an offence was or was not guilty ; which of two witnesses who contradicted each other on a trial ought to be believed ; whether a portrait is like ; whether a song has been well sung ;

whether a book is well written ;—these are questions about which honest and discerning men may hold opinions diametrically opposite ; and to require a man to prove to the satisfaction of a court of law that the opinion which he has expressed on such a question is a right opinion is to prohibit all discussion on such questions. The same may be said of those private communications which we propose to allow. It is plainly desirable that a merchant should disclose to his partners his unfavorable opinion of the honesty of a person with whom the firm has dealings. It is desirable that a father should caution his son against marrying a woman of bad character. But if the merchant is permitted to say to his partners, if the father is permitted to say to his son, only what can be legally proved before a court, it is evident that the permission is worth nothing.

Whether an imputation be or be not made in good faith, is a question for the courts of law. The burden of the proof will lie sometimes on the person who has made the imputation, and sometimes on the person on whom the imputation has been thrown. No general rule can be laid down. Yet scarcely any case could arise respecting which a sensible and impartial judge would feel any doubt. If, for example, a public functionary were to prosecute for defamation a writer who had described him in general terms as incapable, the court would probably require the prosecutor to give some proof of bad faith. If the prosecutor had no such proof to offer, the defendant would be acquitted. If the prosecutor were to prove that the defendant had applied to him for money, had promised to write in his praise if the money were advanced, and had threatened to abuse him if the money were withheld, the court

would, probably, be of opinion that the defendant had not written in good faith, and would convict him.

On the other hand, if the imputation were an imputation of some particular fact, or an imputation which, though general in form, yet implied the truth of some particular fact which, if true, might be proved, the court would probably hold that the burden of proving good faith lay on the defendant. Thus, if a person were to publish that a Collector was in the habit of receiving bribes from the zemindars of his district, and were unable to specify a single case, or to give any authority for his assertion, the courts would probably be of opinion that the imputation had not been made in good faith.

Again : if a critic described a writer as a plagiarist, the courts would not consider this as defamation without very strong proof of bad faith. But if it were proved that the critic had, like Lauder, interpolated passages in old books in order to bear out the charge of plagiarism, the court would doubtless be of opinion that he had not criticised in good faith, and would convict him of defamation.

It will be necessary to provide in the code of procedure rules for pleading in cases of defamation, which may give to an innocent man who has been calumniated the means of clearing his character. It will be proper to provide that a defendant who is accused of defamation, and who rests his defence on the truth of the imputation alleged to be defamatory, shall be held strictly to the proof of the substance of the imputation if the imputation be particular, and shall be compelled to descend to particulars in his plea if the imputation be general. It will not be expected that we should here

go into any details respecting the law of criminal pleading. It is sufficient here to say, that the importance of framing that part of the law in such a manner as to give full protection to persons whose character has been unjustly aspersed has not escaped our attention.

We may here observe that an imputation which is not defamatory may, under certain circumstances, be punishable on other grounds. Such an imputation may be intended to excite disaffection. If so, though not punishable as defamation, it will be punishable as sedition. An attack made, in good faith, on the public administration of the Governor of a presidency, will in no case be a defamation. But if the author of it designed to inflame the people against the government, he will be liable to punishment under Clause 113.

Again : an imputation which is not defamatory may be intended to excite a mob to violence against an individual. If so, the author of the imputation is punishable under Clause 94.

Again : an imputation which is not defamatory may be uttered in the hearing of the person who is the object of it, for the purpose of wantonly and maliciously annoying that person. If so, it is punishable under Clause 485. There are many cases in which it is fit that unpleasant truth should be told respecting an individual. But there is no case in which it is desirable that such truth should be told in such a way that the telling of it is a gross personal outrage. A person who has detected, or thinks that he has detected, a dishonest misrepresentation in a book, has a right to expose it publicly ; but he cannot be allowed to intrude into the presence of the author of the book, and to tell him to his face that he is a liar. A person who knows the

mistress of a female school to be a woman of infamous character deserves well of society if he states what he knows ; but he cannot be allowed to follow her through the streets calling her by opprobrious names, though he may be able to prove that all those names were merited. A person who brings to notice the malversation of a public functionary deserves applause. But a person who hangs a public functionary in effigy at that functionary's door, with an opprobrious label, does what cannot be permitted even though every word on the label, and every imputation which the exhibition was meant to convey, may be perfectly true.

We do not apprehend that the clauses relating to the printers and publishers of defamatory matter require any explanation or defence.

END OF VOLUME VII

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